United States Court of Appeals for the Second Circuit



APPENDIX

NO. 75-4037

BAS

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

BAUSCH & LOMB, INC.,

Respondent.

On Application for Enforcement of an Order of The National Labor Relations Board

APPENDIX

ELLIOTT MOORE,

Deputy Associate General Counsel,

National Labor Relations Board.

Washington, D.C. 20570



PAGINATION AS IN ORIGINAL COPY

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APPENDIX

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES WASHINGTON, D. C.

BAUSCH & LOMB, INC.

and

Case No. 3-CA-5525

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 71-71A, AFL-CIO

William G. McGee, Esq., for the General Counsel.

Gerald L. Payley, Esq., of Nixon, Hargrave, Devans & Doyle, Rochester, N. Y., for the Respondent.

Harold Cohen, Esq., of Rochester, N. Y., for the Charging Party.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Bausch & Lomb, Inc.,

Board Case No.: 3-CA-5525

- 1. 7.74 Charge filed.
- 2.12.74 Amended Charge filed.
- 2.27.74 Complaint and Notice of Hearing, dated.
- 3. 6.74 Respondent's Answer to Complaint, received
- 3.13.74 Charging Party's Attorney's Request for Postponement of hearing, dated.

	dated
3.20.74	Regional Director's Order Rescheduling Hearing, dated.
4.16.74	General Counsel's Notice of Intention of Amend Complaint, dated.
4.30.74	Hearing Opened.
5. 1.74	Hearing Closed.
5.31.74	General Counsel's Motion for Correction of Errors in Official Report on Proceedings, received.
6. 3.74	Respondent's Motion to Correct Errors in the Official Report of Proceedings, received.
6.21.74	Administrative Law Judge's Decision issued.
7.15.74	Respondent's Exceptions to the Administrative Law Judge's Decision, received.
10.25.74	Decision and Order of the National Labor Relations Board, dated.
11.18.74	Respondent's Motion to Reconsider the Decision and Order of the Board, received.
11.29.74	Board's Order Denying Motion, dated.

[Dated 10/25/74]

[D--9207 Rochester, N.Y.]

DECISION AND ORDER

On June 21, 1974, Administrative Law Judge Eugene E. Dixon issued the attached Decision in this proceeding. Thereafter, the Employer filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, $\frac{1}{-}$ and conclusions $\frac{2}{-}$ of the Administrative Law Judge and to adopt his recommended Order.

The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

While not expressly stating that Respondent was the successoremployer of the North Goodman Street boilerroom employees,
the finding of the Administrative Law Judge that Respondent's
failure to recognize and bargain with the Union violated
Sec. 8(a)(5) of the Act clearly presupposed '-- as does his
analysis of the situation and reliance on the Board's decision
in Barrington Plaza and Tragniew, Inc., 185 NLRB 962
(1970), enforcement denied in relevant part 470 F. 2d 669
(C. A. 9, 1972), on other grounds --- that there is successorship here. Members Fanning and Penello so find and conclude,

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent, Bausch & Lomb, Inc., Rochester, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D. C., October 25, 1974.

Edward B. Miller, Chairman

John H. Fanning, Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

(Continued) in accordance with the Administrative Law Judge, that Respondent violated Sec. 8(a)(5).

Chairman Miller concurs in the adoption of the Administrative Law Judge's bargaining order but finds it unnecessary to adopt his conclusion that Respondent is a successoremployer. Rather, Chairman Miller would enter the bargaining order solely as a remedy for Respondent's egregiously discriminatory refusals to employ union members in violation of Sec. 8(a)(3) of the Act. Piasecki Aircraft Corporation, 123 NLRB 348 (1959). Members Fanning and Penello, while finding successorship, additionally agree with Chairman Miller that a bargaining order would in any event be warranted in order to remedy Respondent's 8(a)(3) violations.

[Issued 6/21/74]

[JD-428-74 Rochester, N.Y.]

DECISION

Statement of the Case

EUGENE E. DIXON, Administrative Law Judge: This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was heard at Rochester, New York, on April 30 and May 1, 1974. The complaint, dated February 27, 1974, based upon charges filed and served on February 28, 1974, was issued by the Regional Director for Region 3 (Buffalo, New York) on behalf of the General Counsel of the National Labor Relations Board (herein called the General Counsel and the Board.

The complaint alleged that Respondent had engaged in and was engaging in unfair labor practices by various specified coercive conduct, including its failure to bargain with International Union of Operating Engineers, Local 71-71A, AFL-CIO, (herein called the Charging Party or the Union) as the bargaining agent of the majority of its employees in an appropriate unit and by refusing to hire, and/or continue in their employment, and thereafter refusing to reinstate at its North Goodman Street plant, its employees Eugene Griffin, James Herman and Frank Williams, thus violating Sections 8(a)(1), and (3) and (5) of the Act. In its duly filed answer Respondent denied the commission of any unfair labor practices.

Upon the entire record and from my observation of the witnesses, I make the following:

Unopposed motions from both sides to correct errors in the official transcript are hereby granted.

Findings of Fact

I. Respondent's Business

At all times material Respondent has been a corporation duly organized under, and existing by virtue of, the laws of the State of New York. At all times material herein, Respondent has maintained its principal office and place of business at 635 St. Paul Street, in the City of Rochester, State of New York, herein called the Rochester plant, and has maintained an additional plant at 1400 North Goodman Street in Rochester, New York, herein called the North Goodman Street plant, and is and has been at all times material herein, engaged at said Rochester plant in the manufacture, sale, and distribution of ophthalmic devices, and related products. During the year ending December 31, 1973, Respondent in the course and conduct of its business operations, manufactured, sold, and distributed at said Rochester plant, products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said plant directly to States of the United States other than the State of New York. At all times material herein, Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization

International Union of Operating Engineers, Local 71-71A, AFL-CIO, at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

Since a Board Certification in 1959 the Union had represented the boilerroom employees of General Dynamics Corporation

premises located at 1400 North Goodman Street in Rochester, New York. The latest contract between General Dynamics and the Union, pertaining to the 1400 North Goodman Street, location, was effective from March 11, 1973, through March 8, 1976.

In the summer of 1973, Respondent Bausch & Lomb was contemplating and exploring the acquisition of General Dynamics' 1400 North Goodman Street facility -- just the physical premises, no production or business interests whatsoever. By this time General Dynamics had ceased any manufacturing functions at that location and was leasing out portions of the building for storage to various tenants. This fact had no effect, of course, on the boiler-room operations which were continued and maintained by General Dynamics at all times without substantive or organizational change.

The publicity given to the proposed acquisition by Bausch & Lomb gave rise to an inquiry by the General Dynamics bargaining unit employees and its union representatives as to what they could look forward to job wise with respect to the change in ownership.

Thus, the Union's business manager Ronald Bess called Respondent's vice president, corporate industrial relations, Eugene Roberts, to

Technically the unit was described as comprising all boilerroom employees excluding all other employees, guards, supervisors and professional employees as defined in the Act. This
unit originally covered two different locations of the General
Dynamics Corporation in Rochester. For some reason in about
1962 the Union and General Dynamics began negotiating separate
contracts for each location, one being the 1400 North Goodman
Street location. At all times material the contract covering
the North Goodman Street facility involved the above-described
unit (which I find appropriate) composed of three stationary
engineers, Eugene Griffin, Joseph Herman and Frank Williams,
all allged discriminatees herein and all members of the
Union.

ask what Respondent's position was regarding the three engineers in the bargaining unit at the Goodman's Street location. Bess was informed that Respondent intended to place their own employees in the boilerhouse but that (as testified to by Bess) Respondent "would be prepared to offer to these employees jobs possibly in maintenance, maybe in the pipe shop or words to that effect."

Dynamics unit employees and himself a member of the Union, made more than one request to various of Respondent's officials (on occasions when they were making inspection visits to the Goodman Street premises) on behalf of himself and his three crew members as a unit for the continuation of their jobs under the Bausch & Lomb management. The information he received as a result of these inquiries was always that while Respondent intended to man the boiler-room from its own forces (or give preference to its own employees)—there was the likelihood that Respondent could use the three engineers (as well as Simpson) in its maintenance department and would welcome their applications which would be considered on an individual basis.

Thereafter, on August 21, 1973, Simpson filed a formal application for the Goodman Street job. At the same time he was given application forms for his three engineers (to be mailed back) having again been informed of Respondent's policy to utilize its own employees first and the "likelihood of staffing the boilerhouse" from Bausch & Lomb's organization. He was also informed that Respondent would consider all the applications "on an individual basis."

Roberts testified that "there would be jobs for these people in maintenance other than the power house" if they were qualified. When asked if he did not consider them qualified to work in the boilerroom he answered, "We knew what we had to do with the boiler room. We had our people ready to go in there."

^{4/} A policy of some 20 years standing according to Respondent.

In the meantime Respondent's Samuel H. Fruscione, manager of corporate facility planning, had met Simpson on his several inspection trips to the Goodman Street facility. As part of his evaluation of the boilerroom operation Fruscione came to the conclusion that notwithstanding that Bausch & Lomb had a chief engineer in charge of facility being operated by Bausch & Lomb at Chili, New York, $\frac{5}{}$ "it would be advisable for Bausch & Lomb to employ someone who was familiar with the system . . ." $\frac{6}{}$ For this reason Fruscione recommended that Simpson be hired to head the boilerroom operation in the about to be acquired facility.

Thereafter, having been prompted by Fruscione to see Raymond Anderson, corporate employment manager for Respondent, the latter offered Simpson a job as group leader of the boilerhouse at \$192 a week with a certain category of fringe benefits. Simpson rejected this out of hand. Anderson then excused himself and returned in a few minutes increasing the offer to \$200 a week. Simpson did not reject this outright but left with the request by Anderson 'to think it over and get back to him.'

According to Simpson's underied and credited testimony, at some point not clear in time, he had a conversation with Fruscione at which the latter gave him a pep talk about his prospects as an employee of Bausch & Lomb; how he could not tell Respondent what to do and how he had 'to talk for Bernie Simpson and not for anyone else."

The city code required that systems with various ratings had to be operated by licensed engineers of various ratings.

The Goodman Street facility required a first class engineering rating.

In his various discussions with Respondent about being retained on the Goodman Street job Simpson maintained credibly that he was reluctant to assume the supervision of the operation without his experienced crew.

Simpson protested that he was not trying to tell anyone what to do.

All he was saying was that he did not plan "to become nursemaid...

to a crew of green men." In this connection Simpson pointed out that
his three crew members had sent in their applications and wanted
to know why no one had talked to them. Fruscione suggested that
Simpson take the matter up with Anderson.

Thereafter Simpson called Anderson and arranged an interview for his three crew members with Anderson. The three crew members were interviewed separately on September 24 by Anderson. According to their testimony, after reviewing their qualifications, Anderson told them all essentially the same thing: There were no present openings; Respondent had to look out for its own personnel first; and the applicants were told "Not to put all (their) eggs in one basket." He also told at least one of them, that if anything came up he would let them know. Of the three, Frank Williams, who was the last to be interviewed, also testified that Anderson asked him if he was a member of Local 71. The other two denied any such interrogation as did Anderson in his testimony. Everything considered I credit Anderson.

According to Simpson's testimony some 3 weeks or so after the \$200 offer by Fruscione at Respondent's initiative he met with Ellis Faro, Respondent's director of employment and compensation in the latter's office. 7/ Faro informed him that Vice President Ashcroft had authorized him to offer Simpson \$240 a week as manager of the boilerhouse (a supervisory position as distinguished from leadman, a rank-and-file category) with better fringe benefits. Simpson commented, "The money is very satisfactory (it was \$7 a week more

Simpson was acquainted with Faro from previous employment with Bausch & Lomb and had renewed the acquaintanceship on one of Faro's inspection tours of the Goodman Street facility.

than he was making on the job) but there's one more thing and I think you know what it is . . . what about my three men?" To this, according to Simpson, Faro replied as follows:

Bernie, will you please back off this. We can't touch any of those men. . . if we touched any of those men, we have to take the Union contract and you know that this Company has never dealt with the Union and never intends to deal with the Union. This may change some day. I am not at liberty to say . . . I am not even prepared to say whether the Company is right in this position. Now, Bernie, if you have any regard for me personally, you'll not let this out because if you do, I'll be forced to deny it. It's because of my personal regard that I have to say this but it's the truth.

To this Simpson replied, "these men . . . we're talking about men in their fifties. We are talking about men that are in the twilight of their working years and I just can't see them dumped unto the street at this stage. They've stuck by me and made my job a pleasant one." With that Faro asked if the men would consider other jobs, what would they have to have in the line of a wage rate for work in the plumbing shop or maintenance. Simpson replied that they were getting in the neighborhood of \$5 an hour. Faro went on to say that if they took other jobs and at a later date it should be proved that they were needed in the boilerroom because Simpson's new assistants were not working out "they . . . could possibly get these men back on a transfer circumventing the need to deal with the Union."

Simpson promised to sound out his men on the terms they had discussed and on his own behalf accepted Faro's offer. On his part Faro promised to check with his people and get back to Simpson on the matter. According to Simpson's further testimony, sometime later

Faro told him, "Bernie, don't think that we've forgotten about your men. We'll talk to them at about the middle of November concerning these openings." Simpson then told his three crewmen that they would be contacted by Respondent on or about November 15. No such contacts were ever made.

In his testimony Faro denied making the incriminating remarks attributed to him by Simpson. $\frac{8}{}$ He further testified that Respondent was "looking for plumbers almost anytime" and was hiring them off the street. Having reviewed the applications of the three stationary engineers he "was confident that (Respondent) probably could place them within a maintenance position . . . " He also admitted telling Simpson that the time to talk to the men "will be a couple of week before . . . takeover."

Somewhere along the line Simpson developed second thoughts about his job with Bausch & Lomb and discussed the possibility of employment elsewhere with Union Representative Bess. There appeared to be an opening for a job apparently not as good as his Bausch & Lomb position which Simpson said he might consider but he apparently did nothing about it.

On Friday, December 14, Respondent learned that the transfer of the facility was to be the following Monday. Fruscione and several Bausch & Lomb employees arrived at the plant at 12 noon on December 17. Upon entering the boilerroom Fruscione found Bess and Simpson. Bess stated that he was there to see whether the boilers were in good working order and to help facilitiate the transfer. Simpson indicated that the boilers were all in good working order. At this point Bess said to Simpson that he was sorry to see that Simpson would have to

For reasons which will appear (including my observations of the witnesses) I credit Simpson.

work with a green crew and stated that there was an opening for a job within the union structure that Simpson could have if he wanted it. Simpson inquired whether the job was available regardless of the status of his health. Assured that it was Simpson immediately resigned his position with Bausch & Lomb and accepted Bess' offer.

At this point Respondent was without a licensed chief engineer to take over the facility. Bess informed Fruscione that unless he had a qualified licensed engineer to make the transfer to he would have to shut down the plant. Since the temperature was 12 above there was the likelihood that shutting down the boilers for any length of time would cause damage to the building. In this context Bess offered to Fruscione a union contract on similar terms and conditions as the General Dynamics contract, a copy of which he held in his hand at the time. Fruscione said he lacked authority to accept such an offer and would have to talk to his superiors about it. Bess inquired how much time Fruscione would need for this and was told an hour an a half or so. Bess agreed to keep his men on the job for that period and Fruscione left.

In about 2 hours Fruscione returned accompanied by Robert Aubel a licensed chief engineer employed at a Bausch & Lomb plant in Chili, New York and indicated that Bausch & Lomb was prepared to take over the plant. Although Bess was reluctant to acknowledge Mr. Aubel's status as a licensed chief engineer without being shown his certificate, once the Bausch & Lomb chief of security had assisted in confirming Aubel's status by telephone with the City License Bureau, Bess instructed Simpson to give Aubel a brief tour of the facility and turn it over to Respondent's employees.

^{9/} He had had some health problem.

After taking over the facility Respondent hired on a part-time consultant basis at \$20 an hour one Kelly who had had 5 years experience working at the General Dynamics facility. When asked how much time Kelly put in on this assignment, Fruscione testified as follows:

Well, it's on a diminishing basis. The first month he put in about 60 hours. The second month he put in about 20 hours. And in March he only put in a very few hours. In April we had some operational problems with some of our controls, so he did work another 20 hours but he is scheduled to be phased out with the introduction of our new burners in about 2 months.

Referring to Respondent's recognition of the admitted complexity of the boilerhouse operation and Respondent's intention "to give these men (the three General Dynamics engineers) jobs in other areas" Faro was asked, "Why did you not continue them in the job that they knew so that you would not have a problem?" Faro testified, "I can't answer that."

8(a)(3) Conclusions

The inference that Respondent's failure and refusal to hire the three General Dynamics experienced engineers for its newly acquired Goodman Street facility was grounded in its determination to avoid bargaining with the Union is fully warranted by the circumstances herein alone.

Being fully cognizant of the complexity of the operation it was acquiring and resigned to the necessity of securing someone with experience to run it, Respondent was unwilling and refused to hire the available personnel that would completely eliminate the problem. Indeed, so fixed was Respondent's opposition to this logical and

obvious solution of its difficulties that it was willing to pay out in excess of \$2,000 for special consultation fees (which were still being paid out at the time of the hearing) to instruct its own "qualified" people in the performance of their newly assigned duties. Moreover, to ensure that none of the undesirable might slip into the boilerhouse operation by the back door as it were, Respondent also (being fully cognizant that the applicants were qualified) disregarded and rejected the three engineers' applications for jobs whose skills were in such demand by Respondent that it was hiring to fill them "off the street."

No wonder that Faro, when asked the obvious question by the Union's counsel, was unable or unwilling to produce an answer. The answer, in my opinion, was given to Simpson when Faro informed Simpson that Respondent's refusal to hire the three engineers was grounded in its unwillingness to have anything to do with the Union. On this evidence I find that Respondent has discriminated against Eugene Griffin, Joseph Herman and Frank Williams in violation of Section 8(a)(3) of the Act.

As noted by the Supreme Court in a decision handed down

June 3, 1974, Howard Johnson Co., v. Hotel and Restaurant Employees,

Detroit Local Joint Executive Board, 86 LRRM 2449, 2456, a successor employer has a right to hire or not to hire a predecessor's employees as it sees fit subject to a qualification stated by the Court as follows:

Of course, it is an unfair labor practice for an employer to discriminate in hiring or retention of employees on 'he basis of union membership or activity under Section 8(a)(3) of the NLRA. Thus, a new owner could not refuse to hire the employees of his predecessor solely because they were union members or to avoid having to recognize the Union. See Burns, supra, 406 U.S. at 280-281 n. 5; K.B.J. Young's

Super Marks v. N. L. R. B., 377 F. 2d 463, 65 LRRM 2369 (C. A. 9), cert. denied, 389 U. S. 841, 66 LRRM 2307 (1967); Tri State Maintenance Corp. v. N. L. R. B., 132 U. S. 8 pp. b. c. 368, 408 F. 2d 171, 69 LRRM 2937 (1968).

8(a)(5) Conclusions

I also find on this record that failing to recognize and bargain with the Union since December 17, 1973, Respondent violated Section 8(a)(5) of the Act. Respondent's contention that the bargaining unit is not appropriate because the certification originally covered two of General Dynamics' locations is without merit. The current contract covering the Goodman Street facility makes both the majority and unit presumptively valid in the absence of contrary evidence.

Barrington Plaza and Traginew, Inc., 185 NLRB 962, fn. 5. No persuasive evidence to the contrary was adduced. Moreover, that a unit composed of "all the Utilities Control employees at all five of Respondent's local heating plants" might also have been appropriate, as contended by Respondent, does not render the unit covering the Goodman Street facility inappropriate.

In my opinion the above cited case is controlling on the 8(a)(5) question here. In that case the respondent employer acquired a complex of residential apartments whose maintenance and service employees currently were and for years had been represented by a union. When the takeover occurred the purchaser (which continued to operate the apartments) retained all the unrepresented employees of the predecessor but refused to hire any of the union represented maintenance and service employees for the sole reason that it wanted to avoid any obligation to bargain with the union.

On such facts the Board found 8(a)(3) and 8(a)(5) violations. With respect to the refusal to bargain the Board said that 'The bargaining order . . . is required not only to remedy the aforesaid violations, but also to cure the Respondent's other unfair labor practices . . . by restoring the situation as nearly as possible to that which would have prevailed absence such other unfair labor practices.' Such is the situation here.

The Remedy

Having found that Respondent has committed certain unfair labor practices I shall recommend that it cease and desist therefrom and take certain affirmative action to restore as nearly as possible the situation that would have existed absent the unfair labor practices.

Having found that Respondent discriminatorily failed to hire stationary engineers Eugene Griffin, Joseph Herman and Frank Williams, at its 1400 Goodman Street facility in Rochester, New York, on December 17, 1973, I shall recommend that it offer such employment immediately to each of said individuals and make each whole for any loss he may have suffered as a result of the discrimination against him by paying each an amount equal to that which he would have earned in Respondent's employ at the Goodman Street facility from December 17, 1973, to the date of his hire less his net earnings elsewhere during the interim period to be computed in the manner set forth in F. W. Woolworth Company, 90 NLRB 289, and N. L. R. B. v. Seven-Up Bottling Company of Miami Inc., 344 U.S. 344, with interest as provided for in Isis Plumbing & Heating Co., 138 NLRB 716.

Having found that since December 17, 1973, Respondent has refused and is refusing to recognize and bargain collectively with the Union as the representative of the employees in an appropriate unit,

I shall also recommend that upon request Respondent so bargain and if an understanding is reached embody such understanding in a signed agreement.

In view of the character of the unfair labor practices committed I shall also recommend that Respondent be ordered to cease and desist from infringing "in any manner" upon the rights guaranteed its employees by Section 7 of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions of Law

- 1. Respondent Bausch & Lomb at all times material has been and is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
- 2. International Union of Operating Engineers, Local 71-71A, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
- 3. By failing and refusing to hire Eugene Griffin, Joseph Herman and Frank Williams because of their union membership, Respondent has discriminated and is discriminating against them in regard to their hire or tenure of employment thereby discouraging membership in a labor organization within the meaning of Section 8(a)(3) of the Act.

- 4. All boilerroom employees of Respondent's 1400 Goodman Street, Rochester, New York, facility excluding all other employees, guards, supervisors and professional employees as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
- 5. The Union at all times material herein has represented a majority of employees in an appropriate unit within the meaning of Section 9(a) of the Act.
- 6. Since December 17, 1973, Respondent has refused to bargain collectively with the Union in violation of Section 8(a)(5) of the Act.
- 7. By the foregoing conduct Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended: $\frac{10}{}$

ORDER

Respondent Bausch & Lomb, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

In the event no exceptions are filed as provided by Section 102. 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102. 48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Discouraging membership in a labor organization by discriminating in regard to the hire or tenure of employment of any employee or applicant for employment.

(b) Refusing to bargain in good faith upon request with the above-named Union.

- coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist International Union of Operating Engineers, Local 71-71A, AFL-CIO, or any other labor organization, to bargain collectively with representatives of their own choosing, and to engage in any other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act:
- (a) Offer immediate employment to Eugene Griffin,
 Joseph Herman and Frank Williams as stationary engineers at the
 1400 Goodman Street facility and make each whole in the manner set
 forth in the section entitled, "The Remedy" above.
- (b) Upon request, bargain collectively with International Union of Operating Engineers, Local 71-71A, AFL-CIO, as the exclusive representative of all employees in the appropriate unit and if an understanding is reached embody it in a signed agreement.
- (c) Post at its 1400 Goodman Street, Rochester, New York, facility copies of the attached notice marked, "Appendix." 11/

In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the

Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by its representative, shall be posted by Respondent immediately upon receipt thereof and be maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated at Washington, D.C.

/s/ Eugene E. Dixon
Eugene E. Dixon
Administrative Law Judge

⁽Continued) notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

WE WILL NOT discourage membership in any labor organization by refusing to hire or otherwise discriminating against job applicants because of their union membership.

WE WILL NOT refuse to recognize and bargain collectively with International Union of Operating Engineers, Local 71-71A, AFL-CIO, as the exclusive representative of the employees in the unit described as follows:

All boilerroom employees at our 1400 Goodman Street facility excluding all other employees, guards, supervisors and professional employees as defined in the National Labor Relations Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid, or to refrain from any or all such activities.

WE WILL offer immediate employment to Eugene Griffin, Joseph Herman and Frank Williams as stationary engineers in our Goodman Street facility and make them whole for any loss of pay suffered as a result of the discrimination against them.

WE WILL, upon request, recognize and bargain with International Union of Operating Engineers, Local 71-71A, AFL-CIO, as the exclusive

representatives of the employees in the above-described unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

		& LOMB, INC.
	(Em	nployer)
Dated	Ву	
	(Representative	(Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 9th Floor - Federal Building, 111 W Huron St., Buffalo, N. Y. 14202 Telephone (716) 842-3100.

MOTION TO RECONSIDER THE DECISION AND ORDER OF THE BOARD

Pursuant to Section 102. 48 of the Rules and Regulations of the National Labor Relations Board, counsel for the Company moves for reconsideration of the decision and Order of the Board dated October 25, 1974, and received by Respondent on October 29, 1974, on the basis of the following material errors:

- 1. The arbitrary and capricious finding by a majority of the Board that Respondent is a successor employer to General Dynamics in the absence of any evidence of the existence of the essential criteria established by the Board and the courts for finding such a relationship.
- 2. The arbitrary and capricious affirmance in the absence of substantial evidence, and despite substantial evidence to the contrary, of the Administrative Law Judge's finding that the North Goodman Street boilerroom is an appropriate bargaining unit.
- 3. The arbitrary and capricious entering of a bargaining order on the basis of successorship in the absence of any evidence and without a determination that the Union represented a majority of Respondent's employees in the North Goodman Street boilerroom at the time when Respondent had placed a full complement of employees in the North Goodman Street boilerroom.
- 4. The arbitrary and capricious entering of a bargaining order on the basis of an allegedly egregious violation of Section 8(a)(3) of the Act in the absence of any evidence and without a determination that the Union would represent a majority of Respondent's

North Goodman Street boilerroom employees if Eugene Griffin, Joseph Herman and Frank Williams were reinstated.

Dated: November 15, 1974

Respectfully submitted,

/s/ Nixon, Hargrave, Devans & Doyle Nixon, Hargrave, Devans & Doyle Attorneys for Respondent, Bausch & Lomb, Inc. Office and P. C. Address Lincoln First Tower Rochester, New York 14603 Telephone: (716) 546-8000

Gerald L. Paley, Esq., of Counsel

ORDER DENYING MOTION

On October 25, 1974, the National Labor Relations Board issued a Decision and Order in the above entitled proceeding—
in which it adopted the findings, conclusions, and recommendations of the Administrative Law Judge as contained in his Decision of June 21, 1974, and ordered that Respondent take the action set forth in the recommended Order of the Administrative Law Judge.

Thereafter, on November 18, 1974, Respondent filed a Motion for Reconsideration, Brief in Support and request for oral argument.

The Board having duly considered the matter.

IT IS HEREBY ORDERED that the Respondent's motion for reconsideration be, and it hereby is, denied, as it sets forth no matters not previously considered by the Board.

IT IS FURTHER ORDERED that the Respondent's request for oral argument be, and it hereby is, denied.

Dated, Washington, D. C., November 29, 1974.

By Direction of the Board:

Michael M. Balsamo

Associate Executive Secretary

²¹⁴ NLRB No. 88

GENERAL COUNSEL'S EXHIBIT NO. 5

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

STROMBERG CARLSON, A DIVISION
OF GENERAL DYNAMICS CORPORATION
Employer

and

Case No. 3-RC-2145

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 71-71A, AFL-CIO Petitioner

Consent

Stipulation

Board Direction

CERTIFICATION OF REPRESENTATIVES

An election having been conducted in the above matter by the undersigned Regional Director of the National Labor Relations Board in accordance with the Rules and Regulations of the Board, among:

All boiler room employees, excluding all other employees, guards, supervisors and professional employees as defined in the Act.

And it appearing from the Tally of Ballots that a majority of the valid ballots has been cast for a union seeking to represent separately the employees in the above-described appropriate unit; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board,

IT IS HEREBY CERTIFIED that INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 71-71A, AFL-CIO

has been designated and selected by a majority of the employees of the above-named Employer, in the unit herein involved, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hour of employment, and other conditions of employment.

Signed at Buffalo, New York
On the 28th day of May, 1959.

On behalf of NATIONAL LABOR RELATIONS BOARD

Regional Director for Third Region National Labor Relations Board

EXCERPTS FROM GENERAL COUNSEL'S EXHIBIT NO. 6

AGREEMENT

Between

Electro Dynamics Division of
GENERAL DYNAMICS CORPORATION
Located at 1400 North Goodman Street, Rochester, New York

(Hereinafter referred to as 'the Company')

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO
AND ITS LOCAL 71-71A
(Hereinafter referred to as "the Union")

--WITNESSETH--

ARTICLE XXV

TERMINATION OF AGREEMENT

This Agreement shall become effective March 11, 1973, and continue in full force and effect through March 8, 1976. Thereafter, this Agreement shall be automatically renewed, from year to year, unless at least 60 days prior thereto, or prior to the end of any subsequent yearly contract period, as the case may be, either party gives written notice to the other of any intention to modify, amend or terminate the Agreement as of the end of such period. In the event that such notice is given by one party, the other party shall have a further period of five days after receipt thereof within which to serve written notice of its intention of modify, amend, or terminate the Agreement as of the end of such period. In the event that such notice or notices are given, the Agreement will be deemed

terminated as of the end of such period, in whole or in part, in respect to those portions thereof concerning which said notice or notices to modify, amend or terminate are given. Upon termination of this Agreement under the provisions of this Agreement, all rights accruing under this Agreement shall expire at its termination date.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Third Region

In the Matter of:

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BAUSCH & LOMB, INC.

and

Case No. 3-CA-5525

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 71-71A, AFL-CIO

U. S. Federal Building, 100 State Street, Rochester, New York, Tuesday, April 30th, 1974.

The above entitled matter came on for hearing, pursuant to Notice, at 10:00 o'clock, a.m.

BEFORE:

HON. EUGENE E. DIXON, Administrative Law Judge.

APPEARANCES:

WILLIAM G. McGEE, ESQ.

111 W. Huron Street, Buffalo, New York 14202, appearing on behalf of the Counsel for the General Counsel.

GERALD L. PAYLEY, ESQ., NIXON, HARGRAVE, DEVANS & DOYLE,

Lincoln First Tower,
Rochester, New York 14603,
appearing on behalf of the Respondents.

HAROLD COHEN, ESQ.,

19 Church Street, Rochester, New York appearing on behalf of the Charging Party.

PROCEEDINGS

JUDGE DIXON: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Bausch & Lomb, Inc., and International Union of Operating Engineers, Local 71-71A, AFL-CIO, Case No. 3-CA-5525.

The Administrative Law Judge conducting this hearing is Eugene E. Dixon.

Will Counsel and other Representatives for the parties please state their appearances for the record?

MR. McGEE: Counsel for the General Counsel, William G. McGee.

MR. COHEN: Counsel for the Charging Party, Harold Cohen, 19 Church Street, Rochester, New York.

MR. PAYLEY: Counsel for Respondent, Gerald Payley, Nixon, Hargrave, Devans and Doyle, Lincoln First Tower, Rochester, New York.

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BERNARD WINTERMAN

was called as a witness by and on behalf of the General Counsel and, after having been first duly sworn, was examined and testified as follows:

JUDGE DIXON: Be seated.

DIRECT EXAMINATION

Q. (By Mr. McGee) Mr. Winterman, what's your occupation? A. I'm the Manager of Labor Relations for the County of Monroe.

- Q. And have you ever been associated with Local 71-71A of the International Union of Operating Engineers? A. Yes, I have.
 - Q. In what capacity? A. Business Manager.
 - Q. For how long? A. 14 years.

JUDGE DIXON: He can use it to examine the witness but let me ask you was the union certified as a bargaining representative

of these power house employees at --

MR. PAYLEY: North Goodman Plant of General Dynamics and the Carlson Road Plant of General Dynamics.

THE WITNESS: Yes, they were.

JUDGE DIXON: And when, roughly, did that occur?

THE WITNESS: 1959.

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Q. Well, did there come a time when the collective bargaining units were divided? A. Yes, there did.

Q. And would you tell us when and what happened and under what circumstances? A. Well, I can't recall the date or the year but, as I recall, it was during an organizational campaign by the International Union of Electrical Workers with the Carlson Road Plant. And I think that --

JUDGE DIXON: Go ahead.

Q. (By Mr. McGee) All right, Mr. Winterman. You were stating that there was an organizational campaign being run by the International Union of Electrical Workers at the Carlson Road Plant. Is that correct? A. Correct.

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Q. Would you pick it up from there the best that you recall?

A. The best I recall, the General Dynamics Corporation then stated that they were now two separate divisions of General Dynamics Corporation, one being an entity entitled, "General Dynamics Electronics," as best I recall, on Goodman Street, and the Carlson Road Plant being called, "General Dynamics Telecommunications."

- Q. And can you give us an estimate as about when that might have occurred? A. Oh, I would have to say probably 1962, '63, along in there.
- Q. Now, from that point on, were joint or separate collectively bargaining agreements negotiated? A. From that point on, they were separate agreements.
- Q. Each plant have its own director of Industrial Relations?

 A. Yes.
- Q. But you continued to represent both units as a business manager? A. Yes, I did.
- Q. Now, did you have a continuous series of separate collective bargaining agreements until you left as Business Manager in 1972? A. Yes, I did.

Q. Who was your successor as Business Manager?

A. Ronald Bess.

MR. McGEE: You may ask, Mr. Payley.

CROSS EXAMINATION

- Q. (By Mr. Payley) Mr. Winterman, you testified that in 1958 the Board certified the unit at both the Carlson Road Plant and the North Goodman Street Plant of General Dynamics. A. I said 1959.
- Q. 1959. That certification included both heating plants, is that correct, of the General Dynamics Plant? A. Both power plants.

- Q. Now, you also testified, although you were not positive of the date, that in about 1962, did you say, you reached an agreement with General Dynamics separating the two heating plants as part of the collective bargaining agreement? A. No, I had nothing to do with that agreement. That was an edict by the corporation that they were now considered to be two separate entities.
- Q. The corporation said they were two separate entities. Now, the union, you were the business manager of -- at that time, is that correct? A. Yes.
- Q. Represented employees at both heating plants?A. Correct.

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- Q. When the company decided to break up the two facilities into two separate divisions, you continued to represent the employees in those heating plants, is that correct? A. Correct.
- Q. At that point in time, you entered into separate bargaining agreements for each location? A. Yes, I did.
- Q. Now, was this then pursuant to any Board procedure?

 A. No, it was not.
- Q. This was done pursuant to an understanding between you and the company, is that correct? A. Correct.
- Q. So the only certification then, to the best of your recollection, by the National Labor Relations Board was the certification for both plants which occurred in 1959? A. Correct.

RONALD W. BESS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

- Q. (By Mr. McGee) Mr. Bess, would you give your name and address for the Reporter? A. Ronald W. Bess, Allenshill Road, Honeyoye, New York 14471.
- Q. Mr. Bess, what's your occupation? A. I'm the present Business Manager of Local 71-71A of the International Union of Operating Engineers.
- Q. And for how long have you had this position?

 A. Approximately two years.
- Q. Generally speaking, what are your duties and responsibilities?

 A. I take care of grievances, arbitrations, negotiate contracts, organizing, things of that nature.
- Q. Did your union, while your -- while you were Business Manager represent any employees of General Dynamics in Rochester, New York? A. Yes, we did.
- Q. And what type of employees? A. Stationary Engineers.
 - Q. At what locations? A. At 14 North Goodman Street.
- Q. Any other location? A. Yes. The company does have another division at Carlson Road.
- Q. When you negotiate a contracts with General Dynamics for these engineers, did you negotiate separate or joint contracts?

 A. We negotiated separate agreements for the two facilities.

MR. McGEE: Would you mark this, please.

(The document above-referred to, was marked General Counsel's Exhibit 6 for identification.)

MR. McGEE: Your Honor, I have a collective bargaining agreement marked for identification as General Counsel's Exhibit 6. In my hand, I have the entire agreement consisting of several pages not numbered. For the purposes of this case, I'm only interested in

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the first page which includes the article on recognition, the second last page, Article 25, the termination of agreement clause, and the last page, the signature page.

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MR. McGEE: May I state for the record the recognition clause so we can move along with more understanding?

JUDGE DIXON: All right. Go ahead.

MR. McGEE: Article 1. "Recognition." "The Company hereby recognizes the union which has been certified by an order of the National Labor Relations Board dated May 28th, 1959, as exclusive representative of all Boiler Room employees of the company's plant at 1400 North Goodman Street, Rochester, New York, for the purpose of collective bargaining for and in behalf of said employees with respect to rates of pay, wages, hours of employment, or other conditions of employment covered by this Agreement."

JUDGE DIXON: Now, this is the plant that's in issue?

MR. McGEE: Yes. The termination or the effective date in termination, I think, is also pertinent at this point. I'll only read the pertinent portion of Article 25. "Termination of Agreement."

"This agreement shall become effective March 11, 1973, and continue in full force and effect through March 8th, 1976."

- Q. (By Mr. McGee) Mr. Bess, at the time this contract was executed, was General Dynamics, engaged in its regular manufacturing operation? A. No. The General Dynamics had ceased manufacture at that facility and had certain portions of the building leased out to tenants.
- Q. During the latter months of 1973, did it come to your attention that General Dynamics was negotiating for the sale of its North Goodman Road Plant? A. Yes.

- Q. How did you learn about this? A. There were articles in the paper and I was in contact with the representatives of General Dynamics and they were keeping me informed as to the sale of the plant.
- Q. During this period, was General Dynamics still maintaining its North Goodman Road Premises, that is, the maintenance services?

 A. Yes.
- Q. Including the boiler room operation? A. Including the boiler room operations.
 - Q. Your members were working in the boiler room?
 - A. Yes.

- Q. How many? A. Three.
- Q. Do you recall their names and their supervisor?

 A. Mr. Herman, Mr. Griffin, Mr. Williams, and the supervisor was Mr. Simpson.
- Q. Now, who purchased or took physical possession of the North Goodman Street Plant? A. The Bausch & Lomb Corporation.
- Q. Did you have any conversations with any of the Bausch and Lomb Representatives during this period of negotiation and transfer?

 A. Yes. I had conversations with the company.
 - Q. All right. More than once? A. More than once.
- Q. Do you recall your first conversation and the name of the Company Representative? A. Yes. The first conversation was near the time it looked like the closing was going to be and I called a Mr. Roberts.
- Q. Do you know what his title is? A. He's the Vice-President of the Corporation but I don't know his full title.
- Q. Well, how did you talk to him, by person or telephone?

 A. Telephone.
 - Q. Who called who? A. I called Mr. Roberts.

- Q. Tell us what you recall about that telephone conversation? A. I called Mr. Roberts and asked him what the company's position was with regard to the three engineers in my bargaining unit and the General Dynamics Plant on 1400 North Goodman. He told me that he did not have an answer and he would have to get in touch with somebody and he would call me back. He did call me back in a very short time. I would say maybe ten to fifteen minutes, but I'm guessing there. He told me at that time that the company would be prepared to offer to these employees jobs possibly in maintenance, maybe in the pipe shop or words to that effect.
 - Q. Do you recall any more of that conversation? A. No.
- Q. Do you recall any conversation with respect to the staffing of the boiler room? A. Yes. Mr. Roberts indicated to me that the company intended to place their employees in the boiler house and that that was the end of our conversation.

Q. Now, were you at the plant on December 17th, 1973?

A. I was.

Q. And on that date, you had a conversation with a representative of Bausch & Lomb? A. I did.

Q. Do you recall his name? A. Mr. Fruscione.

Q. Did anyone else enter into this conversation? If so, who? A. There was Mr. Simpson, entered into the conversation. Mr. Fruscione. Those were the only two people that entered into the conversation at that time.

Q. Were any other people present? A. Yes. Mr. Herman and Mr. Griffin, I believe, and there was, I take it, an employee of the company, that came in with them. I do not know his name.

Q. You mean an employee of Bausch & Lomb? A. Yes.

Q. Anyone from General Dynamics present? A. Yes.

There was from General Dynamics a Mr. Draper from the General Dynamics Corporation.

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- Q. About what time of day was this conversation?

 A. It was approximately noon, 12:00 noon, when the representatives of Bausch & Lomb and Mr. Draper came over to the boiler plant.
- Q. So the conversation was in the boiler plant? A. It was.
- Q. Well, let me ask you this: For what reason were you there that day? A. Well, I was there for two reasons, to represent the employees and to try to see if there was any possibility of arranging a collective bargaining agreement with Bausch & Lomb.
- Q. Did you know at that time who Bausch & Lomb had hired to supervise the boiler room? A. I did, yes.
 - Q. Who was he? A. Mr. Simpson.
- Q. At that time had Bausch & Lomb hired any of the three stationery engineers mentioned before? A. Not to my knowledge.
 - Q. All right. What -- with that background, tell us what was said and what happened around noon on December 17th, last year.
 - A. Well, the company representatives of Bausch & Lomb and, as I said, the representative of General Dynamics, came over to the boiler house. They entered -- Mr. Draper introduced the representatives of Bausch & Lomb and I believe Mr. Fruscione, from the Bausch & Lomb Company, simply said to Mr. Simpson, "Well, Bernie, your problems are our problems," or words to that effect. Pretty much at that time I realized that the company had no intention of offering jobs to the three employees and I indicated to Mr. Simpson that he had a choice, that he did not have to work at the Goodman Street Facility for Bausch & Lomb if he chose not to that I knew that through conversations with him that he was hesitant to be the chief for Bausch & Lomb because he would have to be working with inexperienced people that did not know the plant --

- Q. Go ahead. A. Mr. Fruscione then said, or words to the effect, that this -- that if Mr. Simpson took this job.
 - Q. Hold it now. What did you say to Mr. Simpson? A. Well,

I told him he did not have to take the job. I was prepared to see that he would have employment under a union contract with a pension, union pension, but the choice was up to him. He did accept -- he asked a couple of questions which I don't recall exactly what he said but he asked the question about he had had a serious problem with his health and that he wondered if this would influence his capabilities or the fact of obtaining a job with another employer and I told him that it would not. He then, after a few moments, accepted the offer that I had made and --

- Q. Excuse me. May I interrupt? You were going to state what Fruscione said. A. Mr. Fruscione then said that this would put Bausch & Lomb in a very peculiar position and that I responded to him that I realized that this would put the company in a spot but the company showed no concern for the other three employees that they were dumping out in the street. And that was the end of that conversation with Mr. Fruscione.
- Q. Well, do you recall anything further Fruscione might have said with respect to the operations? A. Mr. Fruscione told us that he intended to assume operation of the plant.
- Q. Then what happened? A. I asked Mr. Fruscione to produce the stationary engineers license of the employees that would be operating there and they were not available to produce any proof of license. I then indicated to Mr. Fruscione that I would not turn the plant over to him operating but that I would shut down the facility. Of course, Mr. Fruscione did not want us to shut down the facility. So I asked Mr. Fruscione if there was any chance that we could have a collective bargaining agreement similar to the terms and conditions

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we had with General Dynamics Corporation. He indicated to me he had no authority to enter into an agreement of that type and that he would have to check with his superiors down town. They then left and we continued --

- Q. Before they left, what about the operation of the boiler house? A. We agreed to keep the place operating and not shut the plant down.
- Q. In order to what, for what purpose were you continuing this? A. Yes, but I was awaiting his answer but he had to get in contact with the people downtown. I then waited approximately an hour and I think it was approximately 1:00 o'clock I called Mr. Fruscione who was over in the front office of the main plant and asked him if he had a reply as to my offer. He said no, that it was lunch time and that they were having difficulty getting in touch with any of the superiors or officers of the company. I then told Mr. Fruscione that we were not running a charitable organization and that I expected the company to pay the stationary engineers their General Dynamics rate for any time that we operated the plant for them. He indicated to me that the men would be paid for any time they spent operating the plant by Bausch & Lomb.
- Q. Did Fruscione return to the boiler room? A. Yes.

 Mr. Fruscione returned approximately 1:50 and with him he had the

 Chief of Security whose name I don't recall. Also was a Mr. Aubel.
 - Q. Would you spell that? A. A-u-b-e-l.
- Q. Thank you. A. And Mr. Fruscione at that time indicated to me that Bausch & Lomb intended to assume operation of the plant and that Mr. Aubel was a licensed chief engineer.
- Q. Incidentally, who else was present while you were talking with Fruscione? A. Well, there were the people I named previously, Mr. Herman, Griffin and Simpson. Mr. Draper had left, I believe, by that time.

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Q. You can continue with Fruscione and Mr. Aubel. A. I then asked Mr. Fruscione to give or to show me proof of the license of Mr. Aubel who he claimed had a chief engineer's license. They were not able to produce any license. So I indicated to Mr. Fruscione that I would not turn the plant over to them operating but that we would shut it down. Their Chief of Security then told me I would not shut the plant down or I would be in trouble. I reiterated again I would shut the plant down, that I would not turn it over operating. The Chief of Security then proceeded to call the City of Rochester to affirm the existence of Mr. Aubel's license. I then talked with a lady

on the phone from the City of Rochester and she told me that Mr. Aubel did have a Chief Engineer's License and that the License had been renewed in October of 1973.

- Q. What happened then? A. Then I agreed to turn the plant over to the company and I suggested to Mr. Simpson that he give Mr. Aubel a tour of the plant to make sure that the plant was in operating condition. Mr. Simpson did give Mr. Aubel a quick tour of the plant and we then left the premises.
- Q. Before you and the operating engineers or stationary engineers left the premises, was there anything said about pay for the two hours they had spent? A. Yes. The Chief of Security took down the names, addresses and social security numbers of the employees, Mr. Herman, Griffin and Simpson and assured us that a check would be mailed to them for the two hours we operated the plant.
 - Q. For whom? A. For Bausch & Lomb.
 - Q. Then you left? A. Then we left.
- Q. Let me ask you this: Did you ever get an answer from any Bausch & Lomb Representative to question -- to the question made to Mr. Fruscione about an agreement between your labor organization? A. No. There was never a direct denial of an agreement.

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The only indication I had was that when they came back with Mr. Aubel and they told us that they intended to assume operation of the plant.

Q. But no response in direct reply? A. No response.

CROSS EXAMINATION

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- Q. (By Mr. Payley) Mr. Bess, you testified that at the time General Dynamics had issued your contract in March of 1973 for your engineers, that there was no active manufacturing going on at the facility at that time? A. To my knowledge, there was, by General Dynamics, no manufacturing.
- Q. Do you have, of your own knowledge, any idea when General Dynamics ceased manufacturing at the North Goodman Street facility? A. I couldn't tell you the year. It's my understanding that the actual manufacturing ceased before I became Business Manager of this --
- Q. Ceased before you became Business Manager and did you testify when you became Business Manager? A. I testified that I had been Business Manager for approximately two years. I became Business Manager May of 1972.
- Q. So for at least two years while you were Business Manager, General Dynamics was not engaged in manufacturing at the Goodman Street Plant? A. Correct.
- Q. You also testified that you had three engineers working at North Goodman Street, Mr. Herman, Mr. Goodman -- excuse me, Mr. Griffin and Mr. Williams? A. Correct.
- Q. You also mentioned there was a supervisor, a gentleman named Mr. Simpson. A. Correct.

- Q. Now, Herman and Williams and Griffin were all members of the union? A. Yes.
- Q. Was Mr. Simpson also a member of your union? A. He is and was at that time.
- Q. You also testified to a conversation that you had with a Mr. Roberts? A. Yes.
 - Q. Of Bausch & Lomb? A. Yes.
- Q. Did he indicate at that time what plans Bausch & Lomb had for staffing the boiler house? A. He did indicate that they intended to use their own employees in the boiler house.
- Q. Are you aware of the manufacturing operations, of what kind of manufacturing operations Bausch & Lomb is engaged in?

 A. I know that they're engaged in the manufacture of different types of optical equipment.
 - Q. But were you aware that the purchase of the Goodman Street premises was solely for the purpose of buying the physical plant as opposed to buying the business operation of General Dynamics?

 A. Yes.
- Q. What precisely did he say to you with regard to Mr. Williams, Griffin and Herman? A. He indicated to me the company would be prepared to offer them some type of employment in some other place other than the boiler room possibly. I think a pipe shop or something like that was mentioned in the conversation.
 - Q. At a comparable rate of pay? A. Yes.

- Q. So he extended an offer of employment to the three individuals? A. No, he told me that they would be prepared to. He did not extend an offer through me. He told me that -- I asked him what their intentions were and he indicated to me that would be the intention of the company.
- Q. Okay. Were you aware of the fact that Mr. Williams,
 Griffin and Herman had made application for employment at Bausch
 & Lomb? A. I knew they had been interviewed. I did not know
 if they had made out an application.

- Q. And you would characterize then Mr. Roberts' response as not an offer but an indication that there was something available for the three people? A. Yes. That the company was prepared to make an offer. That is what was my understanding of the conversation.
- Q. At that time did he clarify to you the company's position on staffing the boiler room or the heating plant? A. He did.
- Q. What did he say? A. He said that the company intended to staff the boiler house with its own employees or words to that effect. I'm not quoting him.
- Q. Had you had any conversations with Mr. Simpson prior to December 17th, 1973? A. Yes. I had -- I couldn't tell you when, but I had several conversations with Mr. Simpson before the 17th.
- Q. And can you tell me what the nature of those conversations were? A. I believe at some time he indicated to me that Bausch & Lomb | ad made him an offer for employment. I also -- he indicated to me he was hesitant about accepting the offer and because he felt that it would be very difficult to operate the plant with a green crew.

Q. You also stated, as I understand, previously that you were there to represent your employees, employees of General Dynamics and try to arrange a type of bargaining agreement. Had you informed the employees -- I should say informed Williams, Griffin and Herman about your conversation with Mr. Roberts?

A. I'm not sure if I did. I do believe though that I had indicated to them that I had talked with Mr. Roberts and that the company would be prepared to make them an offer.

- Q. Do you know whether or not they inquired of the company about those offers? A. I have no knowledge as to any inquiries between the employees and the company or the company and the employees.
- Q. On December 17th, were any of the people involved, Williams, Griffin or Herman, in a position where they had employment elsewhere? A. I had arranged approximately a week in advance for the placement of Williams -- well, Williams was going to be hired by Stromberg Carlson and Herman, Griffin, were going to be hired by another employer, but there was a problem --

The problem was the closing date had changed so many times, I was having a very difficult time during this period to try to keep the plant operating for General Dynamics and yet try to have places available to place these employees when they --

Q. But all three employees had been placed sometime before the December 17th date upon which Bausch & Lomb took possession?

A. Well, they had had interviews but my indication was that if we were able to maintain -- or stay at the Goodman Street Facility, that they were perfectly free and they were at that time willing to do so.

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Q. You had told them about the conversation with Roberts and you had made an effort to place all three employees in other positions? A. Yes.

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- Q. Now, getting back to Mr. Simpson and these conversations you had with him prior to the 17th, during that period of time, did you indicate to him that you would place him with another employer?

 A. I indicated to Mr. Simpson that I believe I made him the offer in the area of, "Don't worry, I'll do whatever I can to take care of you."
 - Q. This was before December 17th? A. Yes. Because I knew he was hesitant about the green crew. I also knew that he'd like to -- he liked the plant and I believe he was kind of teetering between the two.
 - Q. So you did indicate to him that if he wanted employment elsewhere, you could obtain it for him?

 A. I would attempt to obtain it for him, yes.
 - Q. Did you have anything specific in mind when you made that offer? A. Yes. I had an employer in mind.
 - Q. Did you tell Mr. Simpson who that employer was?

 A. I believe I did.
 - Q. Could you tell me who it is, please? A. Pardon?
 - Q. Could you tell me who that Employer was? A. The Employer is and was Midtown Holding.
 - Q. Which is the Midtown Complex here in the City?

 A. Yes.
 - Q. Did you also ultimately place Mr. Simpson with Midtown Holding? A. I placed Mr. Simpson at Midtown Holding on December 24th, 1973. That's the date of hire.
 - Q. That's the week after Bausch & Lomb took possession?

 A. Approximately a week later.

- Q. That job was available on the 17th when the possession took place? A. It wasn't really available. I called Midtown and indicated to them I had a very well qualified individual and they indicated to me that they would consider it and -- that they had a need but they weren't exactly sure at that time if they were going -- you know -- they could give me no hundred percent guarantee that they would hire an individual.
- Q. So when Mr. Simpson turned down Bausch & Lomb's job, there was no guarantee that he'd have employment elsewhere?
- A. You're confusing what I said. Previous to December 17th, I had no guarantee. By December 17th, I knew for sure that if he wanted the job, he could have it.
 - Q. All right. A. Previous to December 17th.
- Q. So when you talked to Mr. Simpson before the 17th, you indicated to him there was a position available in Midtown Holding?

 A. There would be.
- Q. This is at a point in time after he's accepting employment with Bausch & Lomb? A. Yes.
- Q. And that before the 17th you were positive that if Mr. Simpson wanted that job, it was available to him? A. Correct.
- Q. And did you tell that to Mr. Simpson? A. I believe I did.
 - Q. This is before the 17th? A. Before the 17th.
- Q. So on the 17th, when you started your conversation with Mr. Simpson, it was pretty clear in that time that he had a job elsewhere with Midtown Holding?
 - A. If he so desired.

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Q. Did he give any indication to you before the 17th that he wanted that job? A. His indication to me he wanted the Bausch & Lomb job but he was hesitant with the green crew.

- Q. What's a green crew? A. Well, a crew that's not familiar with or experienced in the plant.
- Q. Just people that have never worked there before, you mean? A. Yes, or people -- it's possible that people that are not familiar with the boiler plant.

- Q. But you knew it was the company's intention to use Mr. Simpson as its engineer when they took over the premises?

 A. Correct.
- Q. And so Mr. Fruscione came with the expectation, as I think you testified when you talked to Mr. Simpson, that Mr. Simpson would begin operating the boilers at the moment that Bausch & Lomb took possession? A. That I'm sure it was Mr. Fruscione's -- I'm sure that's what he thought.
- Q. All right. But immediately you talked to Mr. Simpson about this employment with Midtown Holding? A. No. I think I indicated to you that I had discussed --
- Q. You had discussed and you began a conversation with him that concerning his employment with Bausch & Lomb and employment elsewhere under, you said, a union contract. I'm not sure what you meant by that.

 A. I -- a collective bargaining agreement.

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Q. He would not be your supervisor? A. He would not be a supervisor but the rate of pay would be comparable to what he would earn with Bausch & Lomb as a supervisor.

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Q. So what expectation -- I have to repeat this question -- what expectation would you have under the circumstances that the company might engage your union as collective bargaining representative

by hiring these people on the 17th? A. Well, I knew from the very beginning that Mr. -- I say from the very beginning, I knew Mr. Simpson had reiterated to the company that he was hesitant about taking the job with the green crew. I thought right up to the very last minute that possibly the company would be prepared to offer these people employment with Mr. Simpson.

- Q. There was never any indication from the company?

 A. Never.
- Q. That they would offer employment to the three people?

 A. Not in the boiler rooms.
- Q. So you just showed up on the expectation of the company examining the boiler room, that it would be so complex that they would have to bargain with you through your union, is that correct?

 A. Correct.

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- Q. You didn't do anything else. As soon as Mr. Fruscione appeared on the scene in the boiler house, you entered into this conversation with Mr. Simpson regarding resignation and within five minutes he had resigned from Bausch & Lomb? A. He had decided to take the job at Midtown.
 - Q. A job that you had talked to him about prior to December 17th? A. Yes.
 - Q. Did you at that time, when the company could not produce licenses, threaten to shut the boilers down? A. I did.
 - Q. This was December 17th. Do you recall was it cold that day?

 A. It was about 12 degrees.
 - Q. Would there have been damage to the facilities if the boilers were closed down? A. It was possible, you know, if the company

did not have, experienced people that would know how to operate the boilers.

Q. So if you closed the boilers down and the company could not get them operational again, there was a possibility, because of the cold weather, there could have been damage to the premises?

A. It's possible, yes.

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- Q. At that time did you again indicate that since he did not have a license, you would have to shut the plant down? A. Yes. I indicated that if Mr. Aubel did not have a license, I would not turn the plant over to them. I would shut it down.
- Q. And you were not willing to accept Mr. Fruscione or Mr. Aubel's representation that he was a chief engineer? A. Right.
- Q. And you were not willing to accept the number they provided to you? A. I don't even think they gave me any number.

 They may have offered to give me a number but --
 - Q. But you did not accept that offer? A. No.
- Q. Before you closed the plant down did you indicate that you would check with the City people to determine whether or not Mr. Aubel had a license? A. No. The Chief of Security proceeded to call the City and got a lady on the phone. I did not shut the plant down.
- Q. I'm sorry, I said you threatened to shut it down. A. No, I thought you said I shut it down.

I did not shut it down. They proceeded to call the City, apparently, the license bureau, and I talked to a lady on the phone who indicated to me that Mr. Aubel was a licensed Chief Engineer and that his license had been renewed in October of '73.

- Q. And so you were satisfied that Mr. Aubel was competent to take over the boiler operation? A. I felt that they met the qualifications of the Ordinance.
- Q. And you left the premises? A. No. I then asked Mr. Simpson to take Mr. Aubel on a tour to look at the equipment and they did. They went up onto the landings and looked at various pieces of equipment and after that we left.
 - Q. Left the premises? A. Yes.

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REDIRECT EXAMINATION

Q. (By Mr. McGee) Now, you mentioned something about the code of the City. What relationship, if any, does that have to your talking about shutting down the boiler room operation?

A. Well, the City Code says that a plant of the size of the General Dynamics Plant with the boiler horse power contained therein requires a Chief Engineer to be in charge of that plant and that the Engineers working under the Chief be licensed stationary engineers.

HERBERT ASHCROFT

was called as a witness by and on behalf of the General Counsel and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

- Q. (By Mr. McGee) Mr. Ashcroft, would you give your name and address to the Reporter, please? A. Herbert Ashcroft, 3038 East Avenue, Rochester 14618.
- Q. Mr. Ashcroft, you're employed by Bausch & Lomb?
 A. I am.

Q. What's your title? A. Senior Vice-President Corporate Manufacturing Services.

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- Q. Now, Bausch & Lomb is . . . they do have title to the premises and plant at 1400 North Goodman Street? A. No, they do not.
- Q. They do not? What's their interest in the premises?

 A. They lease it.
- Q. They lease it from whom? A. Urban Development Corporation.
- Q. It's owned by whom? A. Urban Development Corporation.

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Q. Was there an occasion during last summer or sometime when there was an announcement in the newspaper about Bausch & Lomb's intentions with respect to the North Goodman Street premises?

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A. Yes. We put out an announcement sometime in July because we heard rumors from our employees that we were moving out of town.

Q. Well, to move along about the rumors. The employees were a little concerned with the placing of the plant in the other location, that you might be closing your facility in Rochester?

A. Yes.

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Q. How do you resolve the statement in Paragraph 9 with the fact that you were involved in the selection of Robert Aubel?

A. I was not involved in any decision concerning promotion or hire of any specific employees. I didn't promote Bob Aubel. I transferred him.

- Q. Well, in effect, wasn't he given a promotion from the Chili Plant Operation? A. No.
 - Q. What was his job at Chili? A. Chief Engineer.
- Q. And he was just transferred as Chief from the St. Paul
 Street Plant in Chili to the North Goodman Street Plant? A. Correct.
 - Q. At the same rate of pay? A. Yes.

- Q. All right. Incidentally, so far as the corporate policy decision to maintain on the payroll all Bausch & Lomb employees that we could use, this is using your words, when was this corporate policy decision made? A. About 20 years ago.
- Q. And you were involved at that time in the decision?

 A. No, not in the decision at that time.
- Q. Well now, I'm confused again in connection with this Paragraph 9. "But I was involved in the corporate policy decision to maintain on the payroll all Bausch & Lomb employees that we could use."

 A. Like most policies, we review them periodically. Some we change, some we improve, some we drop, and in the past several years, I've been involved.
- Q. Well, let's nail this down. Was there any discussion about the use of Bausch & Lomb employees after Bausch & Lomb Management decided that it would utilize the premises at 1400 North Goodman Street for . . . I think you were transferring your St. Paul . . . A. Operation.
 - Q. ... operations over there? A. Right.
 - Q. So was there a corporate decision made relative to this transfer operation? A. Yes, there was.
 - Q. About when was that made? A. Probably in August.
- Q. And other than yourself, who else was involved?

 A. The President of the Company, Mr. Roberts, the Vice President of Industrial Relations.

Q. The three of you? A. Yes.

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CROSS EXAMINATION

- Q. (By Mr. Payley) Now, Mr. Ashcroft, you testified that you were involved in the purchase of the GD Facility on North Goodman Street. A. I was.
- Q. Could you tell us was that solely a purchase of real estate? A. Purely.
- Q. It didn't include any of the physical assets? A. Only buying real estate.
 - Q. No physical inventories? A. None.
- Q. You also testified concerning this Bausch & Lomb decision relative to utilization of its own employees at Goodman Street. Would you care to expand on what that policy is and how it affected specifically this case?

MR. COHEN: Could you please speak a little louder? It's not coming clearly over.

THE WITNESS: We have five plants in town including the 1400 North Goodman Street Plant and our engineering and maintenance section has a department called Utilities and Control and we transfer people from one department or one branch or one building, from one to the other, depending what the emergencies are, holidays, vacations or sickness, and we wanted to have 1400 Goodman Street

fall in the same plane and that was one of the decisions we made.

Q. You did mention, I think it was in August, that a firm decision had been made by the company to utilize its own employees in the boiler house. A. Right.

- Q. Could you tell us how that possibly came about?

 A. Well, we were trying to organize how we were going to handle the whole 1400 North Goodman Street Complex because we had a lot of engineering work to be done and we had a lot of maintenance to maintain the building. And I think at that point in time they were making a deal with Simpson and we were going to use our other people just --
- Q. So you were going to transfer people from other places within the Rochester Area to run the heating plant at North Goodman Street? A. Right. These people may have been under-employed and there would be promotions for them which are consistent with our previous policies.
- Q. And was that your intention as expressed since August?A. Yes.
 - Q. And it has been consistently followed? A. Right.
- Q. Now, you also indicated that you have overall responsibility for the boiler house operation in the Rochester area?
- A. I have the overall responsibility for it --

- Q. Which includes the heating plant operations? A. Yes.
- Q. And how many heating plants do you have in that area?

 A. Five.
- Q. Could you tell me where they're located? A. Well, there's one on St. Paul Street, one out on Paul Road in Chili.

 There's one in Champany Terrace. There's one on Linden Avenue in Pittsford and Goodman Street.
- Q. And each facility has its own heating plant? A. Each facility has a heating plant.
- Q. I'm sorry. A heating plant. Now, how are the heating plants staffed? A. We have men working there under supervision, supervision which report up through the engineering organization.

- Q. What's your supervisory set up in the heating plants? You have one supervisor for each plant? A. We have one for each plant.
- Q. And that's true of all of them? A. True of all of them, yes.
- Q. Including St. Paul Street? A. Including North Goodman Street, including Linden Avenue.
- Q. St. Paul Street and North Goodman Street have one supervisor? A. Two.

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- Q. Two supervisors. And what about the job classifications in those heating plants? A. They're identical.
- Q. They're all the same job classifications working in the heating plants? A. Just spread them across the company.
 - Q. What about your pay schedules? A. All the same.
- Q. You did mention that you tried to maintain an overall maintenance program. Does that mean within each heating plant there's its own maintenance staff? A. Yes, correct. They have at the moment in some of the areas not a complete maintenance staff, so they have to lend to St. Paul Street for certain emergencies --certain emergency operations or major repairs. That's where our headquarters is.
- Q. So in staffing your heating plants, then within that utility control category, their both engineer types and maintenance types? A. Correct.
- Q. And located at each of the plants? A. Also handle security in certain of the plants.
- Q. But your overall maintenance program is handled on an area basis? A. On an area basis.
- Q. Now, you also mentioned that in cases of emergency, there is some interchange between these area plants? A. We

do this in some of our departments. When we have an emergency, we pull people wherever they're needed in Monroe County.

- Q. You mentioned the Aubel situation. A. Right. That was an emergency.
- Q. So Mr. Aubel was transferred to North Goodman Street as a Chief Engineer? A. Right.
- Q. What about promotions and layoffs and things of that nature? Are all the heating plants treated independently or as a group?

 A. Treated independently from the local source but they all follow our wage guidelines. They're established for the job categories.

 Each job category has a range.
- Q. Do you have bumping rights between the different heating plants in the event of a layoff? A. We probably would if we had a layoff.

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EUGENE ROBERTS

was called as a witness by and on behalf of General Counsel and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

- Q. (By Mr. McGee) Mr. Roberts, give your name and address for the Reporter? A. Eugene Roberts, 5 Foxbourne Road, Penfield, New York.
 - Q. Is your middle initial "F"? A. Yes, sir.
 - Q. You're employed by Bausch & Lomb? A. Yes.
- Q. And your title is Vice President of Corporate Relations?
 A. Corporate Industrial Relations.
- Q. How long have you had that job, Mr. Roberts?

 A. Two and a half years.

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Q. To whom do you report? A. President of the Corporation.

MR. McGEE: Again, Your Honor, I request leave to question, if necessary, under Rule 43(b).

JUDGE DIXON: All right, go ahead.

- Q. (By Mr. McGee) Mr. Roberts, during the negotiations with General Dynamics and/or Urban Development Corporation, you made inspection tours of 1400 North Goodman Street, the premises located thereon, is that correct? A. Made one, at least one. You said plural and I don't know how many --
- Q. Well, do you recall when you took a trip with Mr. Faro?
- Q. And was Robert Burns with you on that trip? A. Yes, sir.
- Q. When did you make that inspection tour? A. August 15th, 1973.
- Q. On that date, did you meet Bernard Simpson? A. Yes, sir.
 - Q. He was introduced to you by Mr. Faro, is that correct?
- A. Yes. He was in the Industrial Relations area which was --
 - Q. That was the area you were talking about? A. Yes.
- Q. And you learned what Mr. Simpson's job or trade craft was? A. Yes.
- Q. And did you have a conversation with him at that time?
 A. Yes, I did.
- Q. And Mr. Faro, Mr. Roberts -- excuse me, -- Mr. Burns were present? A. Yes, they were.
- Q. And tell us the best you recall of what that conversation was. A. Mr. Simpson was very concerned about himself and his crew quotes about their employment and he wanted to know whether

there would be employment with Bausch & Lomb if and when Bausch & Lomb purchased and entered the Goodman Street property. I told him that we were going to employ our people, B & L people first. And if there were any other jobs, of course, they would be considered and if they would like to be considered, they could make an employment application at our St. Paul Street facility where we had our employment department.

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- Q. And you made this clear to Simpson and it applied to both him and his crew members? A. Yes, sir. I indicated that he and any of the three men who worked for him at the North Goodman Street Facility, any one of them would like to have application, they could do so, for employment.
- Q. Now, did Mr. Simpson go into substantial detail of his knowledge of the operation of that particular plant or boiler house operation? A. Yes, sir. He held himself out as an expert and having been on the premises, he knew all the idiosyncrasies and this sort of thing of the facility.
- Q. Did that impress you in any way? A. Well, he impressed me he was a very forceful person and I thought he was probably speaking the truth and knew what he was talking about.
- Q. Now, during this conversation, did you tell Mr. Simpson that each of the three boiler room employees would be considered on their own merits? A. Definitely.
- Q. And that you did not hire as a group, is that correct?

 A. Correct.
- Q. But you told Mr. Simpson, as you've stated -- well -- in no uncertain terms that Bausch & Lomb people would be taken care of first? A. Definitely. This was a very important thing to our company. In this community, the number of companies

that have left for other environments is quite extensive and to maintain a labor force without turn-over and people leaving you and not applying for work is a very serious problem. And as a result of this, we wanted to make sure our people understood that they were going to be utilized first, their skills.

- Q. All right, thank you. A. Very consistent on that.
- Q The second witness today was Mr. Ronald Bess. Had you ever met him in person? A. I have not met him in person.
 - Q. You talked to him over the phone? A. Yes, sir.
- Q. And was this one occasion or more than one occasion?

 A. It was --
- Q. It was a double call that he testified to? A. On the same day, yes, sir, October 17th, 1973.
- Q. How do you recall the date as October 17th? A. I made a note to myself whenever I have a conversation.
 - Q. On your memo pad? A. Yes, sir.
- Q. And as you testified, he phoned you and I'd like to have you give us your recollection of that conversation, the first one with Ronald Bess and the second one. A. Yes. This was late in the afternoon, give or take ten or twenty minutes, around 4:00 o'clock, October 17th, 1973. My secretary indicated that there was a call from Mr. Bess of the Operating Engineers here in Rochester. I took the call and how the conversation initiated itself I don't know but I'm sure he said, 'I'm Mr. Bess," and introduced himself. He asked me, "What are you going to do with the three men in the power house on North Goodman Street?" I indicated to him that we were going to use our own people in the power house and that we might have jobs in our maintenance area for these people. He was very interested in their employment. I indicated to him that I would check and call

him back if there were jobs for these people in areas other than the power house, specifically maintenance. That was the first conversation.

- Q. Now, let me ask you a question. In this first conversation, did he say anything in substance or in effect, "Gee, you're moving in December?" A. Yes. He did. Which I replied to that that was news to me.
- Q. Now, Mr. Bess indicated the phone conversation might have taken place on November 17th and the remark that you attributed to Mr. Bess indicates some degree of urgency. Are you still sure of your date of the conversation? A. Absolutely, without a doubt. The 17th of November is Saturday. I wasn't in the office.
- Q. Before you said you'd call him back, after you said, "That's news to me." Did you indicate how you were going to staff the premises at North Goodman including the boiler house to Ronald Bess?

 A. Yes.
- Q. What did you say to him? A. We were going to use our own people first.
- Q. Did you tell him if there were jobs in maintenance other than the power house, that you would consider these men, other three people for employment? A. Definitely.
- Q. And you did call him back then? A. I hung up. I then talked to somebody and I ascertained that there were jobs in maintenance. I immediately called him back and I said that there would be jobs for these people in maintenance other than the power house.
- Q. Now, with whom did you confer before you called Mr. Goodman? A. Mr. Ashcroft. He's responsible for the whole engineering and maintenance operation.
- Q. And Mr Ashcroft told you that there could be maintenance jobs, or jobs in maintenance for these three men, that is since -- that's Simpson, Griffin and -- A. Not Simpson.

- Q. I mean -- A. Williams is one of the three.
- Q. Williams, Simpson and -- A. No, not Simpson.
- Q. No. Williams, Griffin and --

JUDGE DIXON: Herman.

- Q. (By Mr. McGee) Herman. Those are the three you were talking about? A. Yes. You see, we had --
- Q. Go ahead. I don't like to interrupt anybody. A. These people were employees of General Dynamics and, of course, we had to be very careful not to interfere with their operation. We wanted to make sure there wasn't any problem there so it was necessary for these people to make application. I didn't know their relationship with General Dynamics and we were very clear from the very beginning that they had to make applications individually.
 - Q. I understand. They had applied individually and you in't consider them as a group?

 A. Correct.
- Q. Now, I think you said that your reply to Mr. Bess was that you did have or would have maintenance jobs in the boiler room area and you would hire these men if they were qualified. A. In the maintenance area, not boiler room.
- Q. Now, didn't you consider them qualified to work in the boiler room? A. We knew what we had to do with the boiler room. We had our people ready to go in there.
- Q. I ask you again, did you not consider them? A. I have no idea whether they would be qualified or not. I didn't interview them.
- Q. You didn't check your employment records as to stationery engineers or anything like that? A. They hadn't made any -- I hadn't seen their application at that point.
- Q. But the company at some level determined that if they were going to employ these stationary engineers, that they were not

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going to be working in the boiler room, is that correct? A. As stationary engineers, that's correct. These are very premium jobs and you use your people where they can make the most money.

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ROBERT BURNS

was called as a witness by and on behalf of the General Counsel and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

- Q. (By Mr. McGee) It's Robert F. Burns? A. T.
- Q. Robert T? A. Yes.
- Q. Would you give your name and address to the Reporter, please. A. Robert T. Burns, 163 Somershire Drive, Rochester, New York.
- Q. Mr. Burns, you're employed by Bausch & Lomb?
 A. I am.
 - Q. What's your title? A. Director of Personnel.
 - Q. How long have you had that title? A. Two years.
- MR. McGEE: I ask leave to examine this witness under Rule 43(b), Your Honor.

JUDGE DIXON: All right, granted.

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Q. Thank you. Now, Mr. Burns, did you personally make a tour or inspection of the plant and premises at 1400 North Goodman Road before the decision to lease was made? A. Yes.

- Q. Do you recall when that inspection tour took place?

 A. I believe it was around the middle of August of 1973.
- Q. And you were accompanied by Mr. Roberts and Mr. Faro, is that correct? A. Correct.
- Q. Now, were you present when Mr. Simpson asked Mr. Roberts about an appointment with Bausch & Lomb for himself and his crew?

 A. Part of the time.
- Q. And what portion of the conversation do you recall?

 A. Mr. Simpson sought us out. We were in the Industrial Relations

 Area and Mr. Simpson came up, introduced himself to Mr. Faro whom

 he knew before. They, in turn introduced him to me and to Mr. Roberts.

 And Mr. Simpson then was talking about the boiler house, the boiler

 house people, his expertise and asked the question of Mr. Roberts

 about him and his crew and what is Bausch & Lomb going to do about

 hiring him and his crew.
- Q. And what did Mr. Roberts respond? A. That, "As far as we are concerned, it's real early in the game. We're going to take care of our people first but the other people could apply for employment as individuals."

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RAYMOND ANDERSON

was called as a witness by and on behalf of the General Counsel and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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W., yes.

(By Mr. McGee) It's Raymond W., isn't it? A. Raymond

Q. Give your full name and address to the Reporter, please.

A. Raymond W. Anderson, 14 Clarkes Crossing, Fairport, New York 14450.

- Q. Now, Mr. Anderson, you're employed by Bausch & Lomb and have a title of corporate Employment Manager?

 A. Yes, I do.
- Q. How long have you had this title? A. Since May of 1973.
- Q. To whom do you report? A. I report to Mr. Faro, Director of Employment and Compensation.
- Q. What's your area of authority and responsibility, Mr. Anderson? A. I'm responsible for recruiting of all hourly, clerical, professional, technical and administrative employees.
- Q. Now, you came to know Mr. Bernard Simpson, is that correct? A. Yes, I did.
 - Q. Did you ever interview him for employment? A. Yes, I sure did.
 - Q. Do you recall how many times? A. I believe about once.
 - Q. Could it be more than once? A. Yes, it could, maybe twice.
 - Q. Do you recall when you had your first interview with Mr. Simpson?

 A. I believe it was in the latter part of August of '73.
 - Q. This took place in your office? A. In my office, yes.
 - Q. Just the two of you present? A. Yes.

- Q. For what job did Mr. Simpson apply? A. For the Chief Engineer of the boiler house at 1400 North Goodman Street.
- Q. Okay. Would you tell us, as best you can recall, what was said by him, by you during this interview? A. We generally discussed his qualifications, the type of license that he held, what experience he had had in the boiler house at 1400 North Goodman Street.

The typical interview where we are trying to learn what his experience, background and experience was.

- Q. As a result of this interview, did you make an offer to Mr. Simpson or how did you conclude the interview? A. The first interview was concluded by us telling him that we would let him know and then subsequently --
- Q. Before we get to "subsequently," I have another question. A. All right.
- Q. You recall anything during this first interview in connection with or with respect to application for employment of the other three stationary engineers? A. Yes. Mr. Simpson asked if it would be possible to hire not only himself but the other three men as a complete team because they had been working together for quite some time. I told him that, no, we were considering only his case right now and that the other three men would have to be considered on an individual basis.
- Q. And you indicated they had to file application for employment? A. I'm sorry, I didn't hear you.
- Q. You told Mr. Simpson that they would or should file applications? A. Yes, they should file applications.
- Q. Now, let's get to the subsequent interview. Do you recall when that took place? A. The subsequent interview was, I believe, September 10th, of 1973 in which I talked with Mr. Simpson again and actually extended an offer of employment to him.
- Q. What was the offer, please? A. I don't recall the dollar figure but it was for a group leader to head up the boiler house operation at 1400 North Goodman Street.
- Q. During the course of this interview, were the three other boiler house employees brought up in the conversation? A. Yes.

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He again brought up the idea of having us consider the possibility of hiring the other three men along with him again to work as a team. Again, I reiterated we were considering just his case right now and we would have to take the other three up on an individual basis.

- Q. Did he explain to you why he vas concerned about the retention of these other three engineers? A. Yes. He said that again where they had worked together for so long as a team, he would like to hold them together as a team.
- Q. Did he indicate about the complexities of the operation of the power house? A. Yes, he did.
- Q. Did Mr. Simpson accept your offer of employment that you made to him that day? A. He did not.

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- Q. Now, there are three gentlemen sitting in the audience facing this court room. I think you'll recognize Mr. Williams, Mr. Herman and Mr. Griffin. A. Yes, I do.
- Q. Did you have occasion to interview those three gentlemen?

 A. Yes, I did, on September 24th, 1973.
- Q. September or August? A. I'm pretty sure it was September.
- Q. Well, I really don't want to put -- to quibble about the date but -- I beg your pardon. You're correct according to your statement. Now, you interviewed these three engineers one by one or individually, is that so? A. Individually, yes.
 - Q. But you don't remember the order? A. No, I do not.

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Q. Why weren't they hired as stationary engineers in the boiler room? A. Because we had other longer employed employees

of Bausch & Lomb who we gave higher priority to as far as utilizing them first before we went to outside employees.

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ELLIS FARO

was called as a witness by and on behalf of the General Counsel and, after having been first duly sworn, was examined and testified as follows:

JUDGE DIXON: Be seated.

DIRECT EXAMINATION .

- Q. (By Mr. McGee) Ellis Faro? A. Correct.
- Q. Would you give your full name and address to the Reporter? A. Ellis P. Faro, F-a-r-o, 38 Villewood Drive, 14616.
 - Q. What town is that in? A. Rochester, Greece.
- Q. Now, you're employed by Bausch & Lomb and I believe you have the title of Director of Employment and Compensation?

 A. Correct.
- Q. How long have you had this position? A. About two and a harmonic years.
- Q. To whom do you report, Mr. Faro? A. Eugene Roberts.
- Q. Well generally speaking, what's the reach of your authority and responsibility? A. My position is corporate. I direct the activities of the employment and compensation policies as they relate to benefits, wages and recruitment, embracing that that Mr. Anderson just spoke about.
- Q. In other words, a policy-making level? A. A policy-recommending level, initiation level.

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MR. McGEE: I request permission to examine under Rule 43(b), Your Honor.

JUDGE DIXON: All right, go ahead.

- Q. (By Mr. McGee) Mr. Faro, you had an occasion or perhaps more than one occasion to make an inspection tour of the 1400 North Goodman Street Plant and premises while Bausch & Lomb was contemplating the taking over. A. Yes, I did on one occasion.
 - Q. Do you recall when that was? A. Mid-August.
 - Q. Middle of August? A. Yes, sir.
- Q. And you were with Eugene Roberts and Robert Burns, correct? A. Yes, I was.
- Q. On that occasion, did you meet Bernard Simpson?

 A. Yes, I did.
- Q. Were you present when Simpson and Mr. Roberts had a discussion about employment by Bausch & Lomb? A. Yes, I was there for the early part of that conversation.
- Q. Could you tell us as much as you recall about that conversation? A. Well, Mr. Simpson recognized me and as having known him before, I introduced him to Mr. Roberts, Mr. Burns. He talked to Mr. Roberts about the possibility of his joining Bausch & Lomb. He had mentioned his responsibility with the boiler house, his knowledge of it and that he'd like to be considered if Bausch & Lomb were to purchase the facility. I remember Mr. Roberts indicating we'd be glad to consider his application for employment, that we would likely be staffing and utilizing our own people in most cases and every possible way but his application would certainly be welcomed and we'd be glad to consider it.
- Q. When you informed Mr. Simpson that Bausch & Lomb would be staffing the boiler house giving consideration to its own

employees, did that include the position that Mr. Simpson was asking about for himself? A. At the time I would say yes.

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- Q. Did the company improve its first offer to Mr. Simpson during the course of its second interview? A. No, that was the initial offer we are talking about.
- Q. What was the initial offer? A. \$192 as a group leader on a non-exempt basis eligible for overtime with other benefits accordingly. It was confirmed by letter to him even though his immediate reaction was negative.
- Q. Now, just to save some time, on Page 4 of your statement, I'll hand you your statement, it's in this paragraph, and I'm concerned with this portion right now. I refer you to Page 4 of your statement, 'It became apparent to our management in the evaluation of the building that the boiler room operations were more complex

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than originally expected to be and our managers felt we needed an experienced man for its operation." Now, in this connection, let me ask you this: Who in management made that evaluation?

A. The supervisor of maintenance was the gentleman that talked to me about it and authorized me to extend an offer to Mr. Simpson.

- Q. The Supervisor of Maintenance, what's his name?

 A. Richard Vink.
 - Q. V-i-n-k? A. Correct.

Yes, there was.

Q. Did Mr. Fruscione have any role in the evaluation of the premises and the complexities of this boiler room operation?

A. I'm sure that he did and joined in that recommendation.

- Q. I would assume then there was a third interview?
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- Q. And it was conducted by you? A. Yes.
- Q. When was the third interview? A. Approximately a month later.
- Q. October 10th? A. I'm not sure of the date. I think roughly that, yes.
- Q. And why was a third interview held? A. We had discussed it and a better offer, it was again trying to respond to what Mr. Simpson had found dissatisfactory in our first offer, money, status and privilege. We had extended a better offer that was then acceptable to him and we had responded in something that he had wanted, a better offer monetarily, a better offer privilegewise, and exempt status where he would not have been paid for overtime.
- Q. And what offers did you make to Simpson at this time?

 A. The monetary portion was \$240 per week.
- Q. Any other privileges? A. There are many accompanying benefits and privileges.
- Q. What was his title going to be? A. Manager of the boiler house.

- Q. That would put him about Level 3 privileges? A. Yes.
- Q. Could you describe what the Level 3 privileges are?

 A. They're exempt from the wage hour law, there's an exemption on the wage hour law --
- Q. That's not too much of a privilege but go ahead.

 A. The important thing I think is in salary production whereas has been mentioned, Mr. Simpson mentioned to me that he might have a potential health problem that he be fully paid and protected for six months, that he would get more vacation sooner on this privilege, that he had eligibility for more life insurance under this

privilege than he would under the other privilege. That there's a long term disability plan that's available to Level 3 or exempt people that's not eligible otherwise.

- Q. There's a difference in pension, too, isn't there?

 A. No, there is not.
 - Q. There is not? A. There is not.

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- Q. The pension depends on your salary and your years of service? A. Correct.
- Q. So the higher salary would affect his pension?

 A. Correct.
- Q. If I asked this question before, I'm sorry, but I was thinking about other things. During the course of this third interview, did Mr. Simpson say anything about the three stationary engineers working under him? A. I can't really separate the three out. I assume he did. He was very consistent in that respect.
- Q. Do you recall stating on your interview with the Board Agent that because of the complexity of the boiler house, he felt it necessary that the offer he had been made, that he should have an experienced crew and he spoke on behalf of these other three men -- I'm sorry. I lost my place. But I still asked the same question.

 A. Again, I would say that he was very consistent in his reiteration of that.
- Q. Did he use the terms that he said he felt he had an obligation to his crew, words to that effect? A. Yes.
 - Q. That he didn't want to have a green crew or an inexperienced crew? A. Correct.
 - Q. And when he brought up that topic, how did you respond to him in his plea on behalf of the other three engineers? A. I'm not sure I follow that question.

- Q. Well, when he asked about Herman, Griffin and Williams, what did you say to him in reply? A. I replied, I'm sure, that we were staffing from within our own organization, that we were utilizing our own people first.
- Q. Did Simpson accept your third offer of \$240 plus Level 3 privileges? A. Immediately.

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- Q. All right -- now, in response to my question of whether or not Mr. Simpson brought up the subject of his current crew, what if anything, was said during the course of this third interview by him and by you with respect to these three men? A. Well, I think you put it in the context of conditions. We talked about his crew again and I felt it was a good likelihood that when we took over the plant, that his crew, if they were interested, would have positions with Bausch and Lomb because we had quite a few openings and we definitely considered them.
- Q. That's in reference to the latter part of that paragraph, you stated, "It was discussed at that point any or all three of the men could be considered for other positions in the company when the men were available. At this time we had already selected some of the men we were going to work in the boiler room."

 A. Correct.
- Q. Now, your statement was submitted as of February 4th, 1974, and in addition to Robert Aubel, four other names appear there, Steve Petrino, Werner Fulge, Edward Ludwig and Albert Pittman. Were they the men who were ultimately transferred to the boiler house operation? A. Correct.

Q. Are they still working there as of now? A. Yes, they are.

Q. All four of them, Petrino, Fulge, Ludwig and Pittman?

A. To the best of my knowledge, they are.

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CROSS EXAMINATION

Q. (By Mr. Payley) Mr. Faro, when you first talked to Mr. Simpson in late August, did you indicate to him what the company's policy was with respect to the utilization of employees in the boiler house? A. Yes, I did.

MR. McGEE: I beg your pardon. Could you repeat the question?

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JUDGE DIXON: Read the question back.

(The pending question and answer read back by the Reporter.)

Q. (By Mr. Payley) And what was that policy? A. The promotion from within and transfers or utilization of skills was our basic policy that we would attempt to staff and would have a likelihood of staffing the boiler house from within our own organization.

- Q. Could you tell me, Mr. Faro, whether or not the company has hired any outside stationary engineers since December 17, 1973? A. They have not.
- Q. Did it ever come to your attention as far as Mr. Williams and Mr. Herman are concerned that they had obtained employment elsewhere? A. Yes, it did. I had conversation with one of my associates at General Dynamics Stromberg, Mr. Persassi, actually discussing job opportunity with these people who were currently

employed in the General Dynamics area about late November, I believe it was. Mr. Persassi called to tell us that Mr. Williams had accepted a transfer within the General Dynamics grouping to handle the stationary engineering assignment at the facility, that Stromberg Carlson was moving to -- I believe he said it was the Ireland Building.

- Q. What about Mr. Herman? A. Again, word came to us that Mr. Herman had accepted a job at Ragu.
 - Q. Ragu, which is another company in Rochester? A. Yes.
- Q. And this was approximately when? A. That was only a few days -- right around the time --
- Q. Same time in November was that? A. No, I heard about Mr. Williams beforehand and it was a little later on Mr. Herman.
- Q. But approximately when was this? A. I'd say the second week, first, second week in December.

175 SAMUEL H. FRUSCIONE

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was called as a witness by and on behalf of the General Counsel and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

- Q. (By Mr. McGee) Mr. Fruscione, Samuel H.? A. Yes.
- Q. Give your address? A. 245 Bayway Drive, Webster, New York 14580.
- Q. You're the Manager of Corporate Facility Planning at Bausch & Lomb? A. Correct, sir.

MR. McGEE: I request to examine this witness under Rule 43(b), Your Honor.

JUDGE DIXON: All right.

- Q. (By Mr. McGee) Now, we'll move right ahead to the negotiations for the leasing of the General Dynamics premises. You've been in the hearing room all day and apparently you've met and know Bernard Simpson? A. Yes, I do.
- Q. And you met him on one of the plant tours with other people? A. I met him when -- I made several trips and I met Bernie on one of my trips in July. The first time I met him was early July.

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- Q. Then I believe that on the premises at a later date, same month, you again, as I state, ran him -- ran into him not with your automobile -- I assume encountered him with -- A. I went to the boiler room to try to see what condition the boilers were in so I made arrangements for Bernie to be there so I could inspect the boiler house with Bernie. He met with me and gave me a tour of the boilers at which time I asked questions and determined that the boilers had their annual inspection and I asked a lot of questions with respect to the status of the controls and other technical aspects of the boilers operation. I think I was there for about fifteen minutes.
- Q. Well, during this brief conversation, did he bring up the topic of employment at Bausch & Lomb? A. Not at that time, sir.
- Q. It was brought out in one of your conversations? A. Yes, still in July, later July, I ran into him during one of my many trips through the plant and at this point he asked me -- he stated that he would be interested in continuing to work in the boiler house and

would like to work for Bausch & Lomb because of his association with Bausch & Lomb in the past and asked what he could do to be considered and I told him that there's only one thing I could recommend and that is he put an application in to our employment department and I gave him instructions as to how to do that. That was the extent of my discussion on that point with him.

- Q. Now, there came a time in one of your several visits to the plant premises on Goodman Street when you talked to Simpson and do you recall the occasion when he asked about employment for the three men who worked under him? A. Yes, I do. As you said, it was later and he asked about them and I told him that since I had nothing to do with employment, I could only advise that the men put in applications in the Employerment Department the same as I asked him to do.
 - Q. And did you make a recommendation that Bausch & Lomb hire Bernie Simpson? A. Yes, I did, to Mr. Ashcroft.
- Q. And on what basis did you make your recommendation?

 A. Well, a couple of reasons. We needed another Chief Engineer

 I felt. We've got one, I know. We needed another one. Also I found
 that the conditions of the boilers and the equipment weren't quite up
 to standard from the standpoint of the operating instruction manuals
 and the drawings that should have been present and we had spent
 some time going through this literature and trying to decipher the
 operational aspects.

To my understanding, Bernie understood these quite well, and although we had plans to modernize the boilers, I thought --

Q. When you say, "we" when -- excuse me. When you say, "we," went over the specs and manual, you are talking about -- A. Myself and one of my engineers.

- Q. Did you discuss with Mr. Simpson the operating manual -- A. I asked him what information was available and he just opened the records for us.
- Q. When did you make this reconstant and Mr. Ashcroft bout engaging Mr. Simpson? A. Well, I think it was about late July, I guess, or early August. I'm not really quite sure.
- Q. That's close enough. What was Mr. Asncroft's response?

 A. He agreed with me, thought it was a good idea. He accepted my recommendation, I think.
- Q. Did you at any time recommend to anyone in authority at Bausch & Lomb that the other three stationary engineers to employed by Bausch & Lomb as stationary engineers? A. No, I did not.
- Q. We'll jump right ahead to December 17th. A. That fateful day of the 12 degrees.
- Q. You were there, so was Dan Sharp, the Head of Security, Richard Vink, Gary Draper? A. General Dynamics.
- Q. Rep. And Ron Bess, Union Representative, Simpson,
 Bernie Simpson, and two others whom I think you identified as
 boiler house employees, but you don't know their names. A. Correct.
- Q. Do you have a clear recollection of knowing what happened and what was said on the 17th? A. Pretty much discussed and I think I have a clear recollection.
- Q. Why don't you take it from there and give it in its narrative form. A. We walked into the boiler house. I think it was close to noon as was stated earlier. Mr. Bess was at the door when

we walked in and Mr. Draper introduced Mr. Bess or Mr. Bess introduced himself, I'm not really sure. He told me he was the Business Agent for the boiler operators and that his purpose for

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being there was to insure that the boilers were in good operating condition when they turned them over to us at Bausch & Lomb.

This is what he stated was his purpose. And he stated that as far as he could determine, and he asked Bernie if the boilers were in condition and Bernie stated they were, and we were grouped around the door near the entrance and then Mr. E roceeded to engage Bernie in discussion to the extent that were mething like this — that went something like this: "Well, Bernie, I understand you're going to be working for Bausch & Lomb and that you're going to be operating this plant with an inexperienced or green crew," was the terminology. "I also understand that this might be more difficult for you than it has been under the present circumstances." Bernie said, "This is probably so," not having the benefit of his

crew. And he called it, said it would probably be more difficult and I believe the next thing Mr. Bess said to him was that, "Well, Bernie, if you're ever dissatisfied with your job at Bausch & Lomb, be rest assured that you have the guarantee of a job somewhere within the union structure."

And at that point Mr. Simpson said to him, "Well, does this mean that this is so even in view of my physical condition?" And I interpreted that from the extent of the conversation he still had another serious operation pending. I knew about the one he had had but I thought he said he still had another one that was pending and Mr. Bess assured him this would have no bearing, that he would be assured of a job. Well, when that was said, then Bernie turned to both Mr. Bess and myself and said, "In view of the fact Mr. Bess does assure me of a job and my medical problems will be taken care of, I hereby resign my job with Bausch & Lomb and resign my job with Bausch & Lomb and resign my job with Bausch & Lomb and take the job that Mr. Bess offered me."

Q. Now, during the course of this discussion, did Mr.

Bess make reference to the fact that the three other men had not been offered employment?

A. I think it was either there or

subsequent to that he made a statement to the effect that the other three men had not been made -- given offers of employment from Bausch & Lomb. And I said I knew nothing about that because that was not in my sphere of responsibility.

- Q. Okay. Now, did there come a time when, I believe, you stated in substance or effect you're going to take over the job of planning and there came a discussion about did anyone in Bausch & Lomb have a license necessary for this operation? A. Well, as you well know, we went into the building with the knowledge that Mr. Simpson was going to start work for us. Having a Chief's License, we figured he would take it over. In fact, we had another man, one of our utility operators that would aid in doing the duties required along with the Chief to run the plant and, of course, when Mr. Bess, when Bernie resigned, we were not in a position as of that moment to take over the plant, as of that very moment.
- Q. And there was some discussion about, "Well, if you don't, we'll have the plant shut down?" A. Yes. Mr. Bess indicated if that was the case, he would have to shut the plant down and I indicated he wasn't going to shut the plant down because it was 12 degrees, we had people in the plant and there was a question of serious damage, not some but serious damage.
- Q. You mean like the sprinkler system? A. Yes, and things of that nature that could occur and I didn't feel we would allow the plant to be shut down.
- Q. What arrangements were made then? A. Well, one thing led to another and, of course, Mr. Bess made the offer of continuing the union -- under the contract and I immediately, unequivocally stated

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this is beyond my scope of responsibility and I would have to go talk to my boss about this situation being what it is as of that moment because up until that time Mr. Ashcroft had no knowledge of what had taken place because he expected we would be in full operation when we walked into the plant.

- Q. And you asked for a period of time to consider that whole problem? A. Well, I asked for -- Mr. Bess asked me how much time do I need. Well, it was the noon hour and I knew that our executives were at lunch.
- Q. A one-hour lunch? A. One hour and I said I would probably need an hour, hour and a half or so. Mr. Bess, before I could come back with any kind of determination -- and Mr. Bess agreed to extend that time to us --
- Q. And you received a telephone call from him about -A. I was at the front desk --

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- Q. Well, you can identify him if you want later on. So you left the premises and received a phone call at approximately 1:00 o'clock from Mr. Bess? A. I would say that's reasonable and I told Mr. Bess that I expected to get back to him soon.
- Q. Did he relate or make reference to the contract situation?

 A. No, he did not.
 - Q. And during the telephone call -- A. Not at all.
- Q. Is that the best of your recollection? A. It's my exact recollection.
- Q. But you said that you haven't had time to contact the upper level of people? A. And that's so I wasn't able to do that.
- Q. They were out to lunch. Well, you've mentioned you did return -- I don't mean that in the -- A. An hour and fifteen minutes, hour and a half.

- Q. But in the meantime, you had related this problem to someone, I assume. A. Mr. Ashcroft.
- Q. And how did you relate the problem to him? A. I relayed the problem that Bernie was not an employee and we needed the Chief in there. I recommended that he recruit because it was in his power to do so, recruit Mr. Aubel from our Paul Road Plant get him over here to take over the operation of the plant.
- Q. And Mr. Aubel was your only licensed chief? A. Only chief.

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- Q. Okay. I think we are in Phase 2 of December 17th. You go back to the plant. You go back to the plant. You and Mr. Sharp and Mr. Vink and at this time accompanied by Mr. Auble. Is that correct? A. Correct.
- Q. And I assume that your recollection of what was said or what happened on this second visit on the 17th is quite clear. So would you take it up in narrative form. A. Sure. We walked back in and Mr. Bess of course was there, so was Mr. Simpson and the other engineers, and walked in and Mr. Bess asked me, "Well, what was the outcome?" And I told him, "Well, we came here earlier thinking that Bernie was going to take over the plant," and I said, "I'm sorry, he isn't because we expected to have Bernie run the plant but in view of the fact that he had changed his mind,

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we've taken steps to bring our own Chief Engineer to assume the proper operation of the plant." At that point, Mr. Bess asked me to produce documentary evidence that Mr. Aubel was, in fact, a Chief Engineer. Well, he didn't have his papers with him but he had his -- I think identification card in his portfolio with the number of his license and I showed him -- we showed it to Mr. Bess and

he wanted further proof that Mr. Aubel was, in fact, a Chief. So we put him in touch with the City Bureau of Licenses to report that that was so.

Q. Now, I really don't know how closely connected you are with the operations of the boiler house but I've been informed by people whom I think are your friends, that is, management from Bausch & Lomb, that you should be familiar with these. These are summarizations of the material I subpoenaed with respect to the records of Steven Petrino, Werner Fulge, Edward Ludwig and Albert Pittman. I have not vertified these with the actual contents of the personnel jackets, but the last entry, we go down to the last entry next to their

occupation and job code, rate of pay, and the last entry shows whatever raises they were given upon transfer to the boiler room. In the case of Steven Petrino, it says, "Stationary Engineer." Werner Fulge says, "Utility Control 2K11." He received no raise. Edward Ludwig, same kind of a job classification, "Utility Control 2K11, a jump from three sixty to four forty. And Albert Pittman, Utility Control, this is Roman I, 6 is parenthesis, a raise from four twenty to four forty. Now, what I would like you to explain, if you can, first of all, the meaning of any of the dates that appear on that transfer to stationary engineer or utility control 2. I'll try to put them in chronological order. A. Might save you some time, sir, if I may. As I stated earlier, I'm strictly functional in the aspects of technical and engineering. While I know these gentlemen from the long association in the plant, I have no area of my own responsibility and I have no knowledge whatsoever as to their rasies, what they make. I just know that they've been engaged in this type of work and where they work and I know them because I've been in the plant a

long time. But what their job classification or raises, I'm afraid at this juncture I can't add much to that.

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- Q. That's why I read that because I assumed that's outside of your area. A. Very definitely.
- Q. But I want you to look at the dates of transfer and ask you if there's any significance there. For example, Werner Fulge's date of transfer 12-29-73. Edward Ludwig's date of transfer 12-29-73. Steven Petrino's date of transfer 1-12-74. And Albert Pittman's date of transfer March 2, 1974. My question of course, is if that's the dates that they were transferred into the openings actually employed in the boiler house, how was the boiler operation maintained. We think or let's assume for the time being that Mr. Robert Aubel was over there. A. Well, you've got to understand that we weren't running any production. We had a very skelton force there. Probably just maintaining security, not much above that for quite some time. We were probably running one boiler way over and above the requirements so we weren't supplying heat to very much of the building. In fact, the building was very cold. As far as operating the boilers

per se, we were operating one boiler at a very low fraction of its capable output.

- Q. Well, this has to be done on a 24-hour 7-day a week basis. A. Correct.
- Q. Who was with Mr. Aubel from the time of take-over on December 17th, 2:00 P.M., until what apparently is the first transfer on the 29th of December? A. Well, I'm not really sure whether these transfers coincide with the dates these people were actually brought in. I'm sure that these people were on the premises and working prior to their official transfer.

Q. And you at a point in time engaged Mr. Kelly on a parttime basis as a consultant or trouble shooter, is that correct?

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is that correct? A. Strictly as a consultant. We paid him consultant wages, very handsome wages because of his knowledge of the plant having worked for General Dynamics for five years. This is what he stated to me. I don't know if this is fact or not and presently working with another company.

- Q. Kodak, right? A. I believe that's what he said, yes. And he came to us sporadically on his off hours.
- Q. At your request? A. At our request. We had a working arrangement that whenever he had some off time, he would check in with as and we would allow him to come in.

- Q. Do you want to take a look at your statement, I believe it's the bottom of Page 4. You said, "I asked our engineer if he could contact Mr. Kelly to help us unravel the complexities of the equipment," and would you like to review this part with -- by looking at your statement or -- A. I better read it. I recall it. I don't have a copy but I recall the contents of the statement. Yes, yes.
- Q. Okay. I was referring at this time to the portion where you stated, "I asked our engineer if he could contact Mr. Kelly to help us unravel the complexities of the equipment," and it goes on to say, "In lieu of our having specific engineering data specifically because of our unfamiliarity with the equipment. By this time we were running the plant and learning the operation. We engaged Mr. Kelly," et cetera. Now, my question is, starting with "I asked our engineer"... who would that be? A. One of our plant engineers is an acquaintance of this Mr. Kelly, an electrical engineer. He's one of our plant engineers.
 - Q. He's not connected -- A. Can you hear me?

- Q. Yes. Can you hear me? A. Yes. Actually, before I had asked our engineer to contact him, our engineer offered that he had been discussing our take over of the plant with Mr. Kelly. I guess they're friends. They live in the same neighborhood and that. Learning that we were just taking over the plant and learning to run it, I think Mr. Kelly even asked this engineer whether he would like any help in learning to run it and we were interested and would he be interested on a consulting basis to help us unravel some of the functional systems that we weren't familiar with.
- Q. I assume that you got that information that Mr. Kelly had worked at the boiler house at 1400 North Goodman Street? A. I didn't get that question.
- Q. I assume that you had been informed by this time that Mr. Kelly had worked at the North Goodman Street premises?

 A. Yes. That's the only reason I pursued it. He had been an employee for five years.
- Q. Now, apparently, Mr. Aubel was unable to familiarize himself with this equipment? A. Wait, wait, wait.

- Q. (By Mr. McGee) Well, you didn't have first hand information as to what systems, what valves, what pressures, what gauges and all other things that go in the boilerplant quipment, you didn't have any familiarity with what the area A. No, but when we walked in there for the first time, so to speak, we didn't even know where the stop and start switches were. Where do you turn on the main valves, where does the oil shut off. We had no such knowledge and that wasn't properly documented.
- Q. In the manuals? A. Well, anything that we could find anyway.

CROSS EXAMINATION

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- Q. (By Mr. Cohen) All right. Then you testified that you worked with a skelton crew in the boiler house. A. Exactly right.
- Q. And how many on December 17th after Mr. Simpson and the other three had left? A. Well, as a matter of fact on December 17th, after they had left, we worked with more than a skelton crew. There was probably 15 or 20 of us in there around the clock for three days. We had, as I say, we engaged a consulting engineering firm for our engineering personnel, professional people in learning to operate, learning where things were, where the switches were and proper valves were.

Q. So you had quite a problem for how long? A. No, we didn't have a problem. The plant operated and at no time did we have to shut the boiler down.

- Q. I see. Well, we have shown you, Mr. McGee showed you some summaries of four people who are now suppose to be in the nower house. Is that right? A. Correct.
- Q. And they, I think the dates that were indicated officially -- A. May I back track for one minute, please?
- Q. Yes. A. When I say we operated without any problems, we did find one problem that existed there. In the stand by burners, we found that spinner plates, as they call them, were reversed in the nozzles. We couldn't get a proper flame and it took us a little while to analyze and about four of these that we had on stand by were reversed and we finally determined that what the problem was and connected it and we've been firing ever since.
- Q. Now, all the boilers were operating? A. No, no. We only had one operating.

- Q. How many are operating now? A. We only have the need for one but we rotate them. We only operate one at a time.
- Q. Now, what's the status of the moving operation? Have you commenced moving? A. Oh, yes. We have moved just once -- just one small division of about 100 people in there.

CROSS EXAMINATION

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- Q. (By Mr. Payley) Now, Mr. McGee has also asked you about Mr. Kelly. He was hired as a consultant? A. Right.
- Q. And can you please tell me what you pay Mr. Kelly per hour for his services, please? A. Yes, a good consultant's fee, \$20 an hour.
- Q. And does Mr. Kelly engage in any operational activities whatsoever on -- A. None whatsoever. Every time Mr. Kellys' there, we have one or two operators there.
- Q. And can you tell me approximately how many hours per month Mr. Kelly would put in for Bausch & Lomb? A. Well, it's on a diminishing basis. The first month ne put in about 60 hours. The second month he put in about 20 hours. And in March he only put in a very few hours. In April we had some operational problems with some of our controls, so he did work another 20 hours but he is scheduled to be phased out with the introduction of our new burners in about two months.

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Q. And is he working with you assisting in establishing your new system? A. He's working in establishing our new system.

There were, for instance, a lot of recommendations for our insurance carriers that existed then that we are correcting now.

- Q. And during the period of time that Mr. Kelly acted as a consultant for Bausch & Lomb, he was fully employed elsewhere?

 A. Yes, Kodak.
 - Q. Eastman Kodak? A. Yes.

RECROSS EXAMINATION

- Q. (By Mr. Cohen) I wasn't sure, Mr. Fruscione, whether you had knowledge or not. First of all, Albert Pittman, Werner Fulge, Edward Ludwig and Steven Petrino, they are stationary engineers at the present time, is that correct? A. They're Utilities Control Operators.
 - Q. Are any of them tending the boilers? A. Yes.
- Q. Which ones? A. Well, which ones and when and where, I really can't tell you. I know they're functioning in that category both as maintenance and operational.
- Q. Well, you can't tell me which ones -- A. I'm not there. I'm just there periodically.

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JOSEPH F. HERMAN

was called as a witness by and on behalf of the General Counsel and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

- Q. (By Mr. McGee) Mr. Herman, will you give your full name and address for the Reporter, please? A. Joseph F. Herman, 190 Schnackel Drive, Webster.
- Q. Mr. Herman, what's your trade or craft?

 A. Stationary
 Engineer.

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Q.

5.68

- How long have you been a Stationary Engineer? Q. A. 1969. What classification license do you hold? A. Second. Q. How long have you had that? A. About three years now, Q. I think. Where are you presently employed? A. Ragu Foods. Ragu Foods? A. Yes. Q. 'As a Stationary Engineer? A. Yes. Q. When did you start there? A. 18th of December. MR. PAYLEY: I'm sorry. I didn't hear that. THE WITNESS: 18th of December. (By Mr. McGee) Are you a member of Local 71-71A of the Union here? A. Yes, I am. Q. How long? A. 1969. A. Yes. Continuously? Now, my next question, of course, you were employed by General Dynamics at their North Goodman Street Plant? A. Yes. Q. How long? A. I think April 6th, 1970. A. December 17th. Until --Q, h Last year? A. Right. And your supervisor is Bernie Simpson? A. Right. And did you ever apply for a job with Bausch & Lomb? A. Yes. Did you ever have an employment interview? A. Yes. Q. I'll ask you compoundly, when, where and who conducted Q. the interview? A. I think it was September 24th, Mr. Anderson. Right. His office? A. Q. Just the two of you present? A. Yes.
 - Okay. As best you can recall, what was said or what Q. happened during this interview? A. Well, they looked at the

application and he said, I had a good record, 26 years at Beechnut there. And this would have been my second job. And I told him I'd like to stay on with Bausch & Lomb, only got 10, 12 years to work. So he said, well, he had to take care of their own men first and it was kind of brief and he said, don't put your eggs all in one basket," and that was it.

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- Q. When you asked about staying on, will you specify on what particular job? A. Well, anything that was connected with work.
 - Q. Even outside the boiler room? A. Yes.
- Q. At that interview, were you promised any kind of a job?

 A. No.
- Q. Were you scheduled or contacted to be scheduled for another interview? A. Not scheduled but Mr. Simpson was told that he'd call back the 15th of November for another interview which never happened.
- Q. Well, let's have that again. Mr. Simpson did what?

 A. He told me that around the 15th of November I would be called back for another interview.
- Q. Did he tell you from what source he obtained that information?

 A. No. I don't remember which one told him.
 - Q. You thought you would be, from his words, called for an interview about the 15th of November? A. Yes.
- Q. Well, were you interviewed on November 15th?
- A. No.

 Q. Never offered any kind of a job by Bausch & Lomb?
- Q. Never offered any kind of a job by Badson & Leanning A. Well, just by hearsay.
- Q. I mean directly from any Bausch & Lomb Representative?

 A. No, no.

CROSS EXAMINATION

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MR. McGEE: I'll produce the statement.

- Q. (By Mr. Payley) Now, Mr. Herman, you were employed by General Dynamics from -- for approximately how long? A. It would have been three years in April.
 - Q. Three years in April.

And during the time you were employed, you possessed a second class license issued by the City of Rochester? A. After I got there, yes.

Q. And at the time you applied for employment with Bausch & Lomb, you had a second class license? A. Oh, yes.

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- Q. So you had an indication sometime in November from Mr. Bess about the possibility of employment with Ragu? A. Yes.
- Q. And you actually received an employment from them sometime in December? A. Yes.
 - Q. Approximately December 10th? A. Yes.
- Q. When you had your job interview with Mr. Anderson on the 24th of September, you indicated that he said that Bausch & Lomb would take care of their people first? A. Yes.
- Q. What did that mean to you? Just talking about the boiler room? A. That we wouldn't be working in the boiler room.

- Q. That they would employ Bausch & Lomb people first?

 A. Right.
- Q. When you applied for employment, did you indicate that you wanted a job as a stationary engineer? A. Yes, as a stationary engineer.

- Q. So there was an indication through Mr. Simpson about the possibility of maintenance jobs with Bausch & Lomb?

 A. Right.
 - Q. Did you follow up on that? A. No.
 - Q. So you never did anything? A. No.
- Q. You just ignored it? A. Well, they didn't want me
- Q. How do you know they didn't want you? A. If they wanted you very bad, they would look into it.

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U.S. Federal Building, 100 State Street, Rochester, New York, Wednesday, May 1st, 1974.

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FRANK WILLIAMS

was called as a witness by and on behalf of the General Counsel and, after having been first duly sworn, was examined and testified as follows:

JUDGE DIXON: Be seated.

DIRECT EXAMINATION

- Q. (By Mr. McGee) Mr. Williams, please give your full name and address to the Reporter, please. A. Frank C. Williams, 696 Maple Drive, Webster, New York 14580.
- Q. Mr. Williams, what's your trade or craft? A. My state of craft?
- Q. No, your trade or craft. A. Engineer, Stationary Engineer.

- Q. And how long have you been a Stationary Engineer?

 A. 14 years.
 - Q. That would date back to what year? A. 1960, sir.
- Q. And what class license do you hold? A. Second Class, sir.

- Q. And I'm going to just move along. Your supervisor is Bernard Simpson? A. Yes, Chief Bernard Simpson.
- Q. Are you a member of Local 71-71A? A. Yes, I am, sir.
 - Q. And how long have you been a member? A. 1969.
- Q. Continuously to the present? A. Yes, sir, right up to now.
- Q. Did you ever apply for a job for work at Bausch & Lomb?
 A. Yes, sir.
- Q. You filled out a written application? A. Yes, I filled out a written application, was given me by Bernard Simpson back in the first part of September of '73 and made it out, mailed it in with a self-addressed envelope from Bausch & Lomb.
- Q. And how did it come about that you applied for work as an employee of Bausch & Lomb? A. Well, I heard that the plant was up for sale and Bausch's was looking at it. During the month of August I was away on vacation. When I come back, I found out from Bernard Simpson that other men or personnel was in from Bausch & Lomb and then he gave me the application to make out to send it in.
- Q. Were you contacted by Bausch & Lomb to go to their offices for an interview? A. Not personally, sir, but Bernard Simpson made arrangements with Mr. Griffin, Mr. Herman and myself to go there.

- Q. And you did have an interview? A. Yes, sir, I did.
- Q. Do you recall the date? A. Around the 24th of September. I know it was on a Monday and about the last week of September, sir.
- Q. Now, did the three of you go together that day? A. Not for the interview.
 - Q. I mean you were at the Bausch & Lomb's employment office premises together? A. Yes.
 - Q. Now, it's been testified to by Mr. Anderson that each one of you was interviewed individually. Can you recall the order in which these interviews took place? A. Mr. Griffin was first. Mr. Herman was second and I was last, sir.
 - Q. When Anderson interviewed you, there were just the two of you in his office? A. Yes, sir, just the two of us.
 - Q. Tell us as best you recall what was said and what happened during the interview with Mr. Anderson. A. Mr. Anderson looked over my application and he said my qualifications were good and he said, "At the present time there's no job openings and don't count on us, don't put all your eggs in one basket."
- Q. You referred to the expression, "Don't put all your eggs in one basket," and in connection with that statement, do you recall anything else that could have been said? A. Well, he said that if anything comes up or, you know, if a job was there like that they'd let us know.
- Q. All right. Were you ever contacted by anyone from Bausch & Lomb after this interview? A. No, sir. Right after the time I left, sir.

- Q. Did Mr. Simpson ever relay to you that he was attempting to keep you on in the power house and that he'd made arrangements for an interview, another interview?

 A. Yes, sir.
- Q. Do you recall when that other interview was to take place? A. No, sir.
- Q. Could you give us a guess? Well, let me go back a minute. When Mr. Simpson told you that he was trying to keep you on, did he tell you what position might be available to you with Bausch & Lomb? A. Yes. He said there would be a position open but not in the power plant. It would be maintenance or pipe fitter like.
- Q. And you were to be re-interviewed for such maintenance employment? A. Yes.
- Q. And were you ever contacted for that interview by Bausch & Lomb? A. No, sir.
- Q. To this day, has Bausch & Lomb ever contacted you directly to offer you either a second interview or a job? A. No, sir, they haven't.

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CROSS EXAMINATION

Q. (By Mr. Cohen) Mr. Williams, after you had your first interview with Mr. Anderson, did he tell you whether or not you were going to have a job with Bausch & Lomb? A. No, sir.

MR. PAYLEY: Excuse, me. He said after his first interview with Mr. Anderson.

- Q (By Mr. Cohen) I mean at the interview? A. No, sir.
- Q. Well, what did he tell you? A. He told me at the present time there was no openings like that and they were going to take care of their own personnel first.

Did there come a time when Mr. Bess indicated to you, 263 Mr. Williams, that Bausch & Lomb had indicated they had maintenance jobs available for you, Mr. Herman and Mr. Griffin? A. Yes. And can you tell me when that was? A. No, I can't. Q. 264 Was it in October, October 17th or thereabouts? Q. would say the latter part of October. Can you tell me what Mr. Bess told you? Q. Bess said that they were talking to the Bausch & Lomb --Did he identify who he had talked to? A. No, sir, he Q. didn't. A. He said And what did Mr. Bess tell you, please? about a maintenance job or a plumber's job, like that, and I said I'd like to stay in my own trade. So you indicated to Mr. Bess you were not interested in the maintenance job? A. Well, if it was the last resort, yes, because I wanted to stay in that area like that. At this point in time, did you have other job offers? A. Not at that time, no, sir. And you indicated to Mr. Bess you would rather find a Q. stetionery engineer's as opposed to taking a maintenance job? A. Yes. 265 Did you subsequently obtain a job as stationary engineer? A. Not at that time. This was after your conversation with Mr. Bess? Q. Well, I was looking around, yes. A. I found three of them, Did you finally find a job? sir. As stationary engineers? A. Yes. Q.

- Q. Did you take one of them? A. Yes.
- Q. And when was that, please? A. That wasn't until the 17th of December.
 - Q. 17th of December? A. 1973.
- Q. This was the day that the General Dynamics Plant was released to Bausch & Lomb. A. Right. I finished work at 4:00 o'clock on Saturday, that's the 14th and on the 17th I went for an interview over at Stromberg Carlson.
- Q. Did you obtain employment at Stromber Carlson?

 A. Yes.

EUGENE A. GRIFFIN

was called as a witness by and on behalf of the General Counsel and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. McGee) Be seated. Mr. Griffin, please give your full name and address to the Reporter.

THE WITNESS: Eugene A. Griffin, 13 Hollister Street 14605.

- Q. Spell Hollister? A. H-o-l-l-i-s-t-e-r.
- Q. Did you give Rochester and the zip? A. 14605.
- Q. Mr. Griffin, what's your trade or craft? A. Stationary engineer.
- Q. How long have you been a stationary engineer?
 A. Since 1955.
 - Q. What license do you have? A. Second class.

- Q. Are you a member of Local 71-71A, Operating Engineers?

 A. Yes, sir.
 - Q. How long have you been a member? A. Since 1968.
 - Q. And continuously to the present? A. Yes.
- Q. You've been in this hearing room during all the course of this hearing. There's testimony on the record that you were employed as a stationary engineer at the General Dynamics Plant at North Goodman Street. When did you first start working there at the plant? A. January of '72.

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- Q. And when was your last day of work? A. December 17th, 1973.
- Q. And what job or trade were you in during that period?

 A. Stationary engineer.
 - Q. Under Bernard Simpson? A. Yes, sir.
- Q. Did you ever apply for a job with Bausch & Lomb?

 A. Yes, I did.
 - Q. Fill out a written application? A. Yes.
- Q. Ever have an interview with a representative of Bausch & Lomb? A. Yes, sir, Mr. Anderson.
- Q. And when and where was that? A. At the Bausch & Lomb St. Paul Street on Monday, the 24th, I believe.
- Q. Tell us as best you recall what was said or how -- or what happened during that interview? A. Well, Mr. Anderson reviewed my application, talked about my experience and mentioned they had their own personnel to look out for and not to put all my eggs in one basket.
- Q. Did you at anytime during the course of this interview tell Mr. Anderson what job you preferred, if available?

 A. No, I didn't.

- Q. You didn't mention any particular job? A. No.
- Q. Did he make you an offer of any job? A. No, sir.
- Q. He knew you were an engineer? A. Yes, sir.
- Q. Did he ask you what license you held? A. I believe he did.

- Q. Were you present when Mr. Fruscione and Mr. Simpson had a conversation with respect to any employment in the boiler room?

 A. Yes.
- Q. And were you present during the entire conversation or just a portion of it? A. A portion of it.
- Q. Tell us as best you recall the portion that you heard?

 A. That Mr. Simpson said that he didn't want to play nursemaid to a green crew.
- Q. After the September 24th, 1973 interview by Mr. Anderson, did you ever have another interview by any representative of Bausch & Lomb? A. No, I didn't.
- Q. Did you have conversations with Bernard Simpson about the possibility of employment with Bausch & Lomb? A. Well, after Bernie was hired, I don't know the exact date, but I think it was in

November, he said I would be most likely to be contacted in regards to a plumbing job at Linden Avenue.

- Q. Did Mr. Simpson indicate in any way about when you might be contacted for an interview then? A. It would be before or on November 15th.
- Q. And let's call that the middle of November. Were you at anytime during this period contacted by anyone from Bausch & Lomb for an interview as a pipe fitter or plumber? A. No, sir.

CROSS EXAMINATION

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- Q. Now, you also testified that you were interviewed on September 24th, 1973, by Mr. Anderson? A. Yes.
- Q. Did Mr. Anderson indicate to you that they were staffing the Goodman Power House with Bausch & Lomb people?

 A. He said they have to look out for their own personnel first.

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- Q. Now, you mentioned this maintenance or plumbing job on Linden Avenue. Who told you about that? A. Bernard Simpson.
- Q. And what did Mr. Simpson say? A. That he would be -- he accepted as job as Chief, that then he was going to contact me by on or before November 15th, as a plumber, \$5.00 an hour.
 - Q. Not to work in the boiler house? A. No.
 - Q. Did Mr. Simpson tell you who authorized him to make that offer or indicate they would make that offer to you?

A. He had been talking to Mr. Faro.

- Q. And he indicated that Mr. Faro said this? A. Yes.
- Q. That you would get a plumber's job at Linden Avenue?

A. Yes.

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- Q. When did you first apply for employment at Midtown Holding? A. It was the week prior to going to work, the 18th.
- Q. So approximately a week before the 18th you had applied for employment? A. Yes.

- Q. And were you accepted? A. Yes, sir.
- Q. About a week before that? A. Yes.
- Q. Was this the only job you applied for? A. No, I went for a couple more.
- Q. Could you tell us where they were? A. One was Rochester Products.
- Q. As a stationary engineer? A. Yes. And one was for the City Garage.
 - Q. As an engineer? A. Engineer.

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- Q. And you didn't hear from those two sources? A. No.
- Q. So it wasn't until approximately December 11th, 1973, that you knew that you had another job? A. Yes, sir.
 - Q. Yet you never pursued this possible maintenance job on Linden Avenue with Bausch & Lomb? A. No.
- Q. But you did pursue other areas of employment with other companies? A. Yes, I did.

BERNARD R. SIMPSON

was called as a witness by and on behalf of the General Counsel and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

- Q. (By Mr. McGee) Mr. Simpson, please give your name and address to the Reporter, please. A. Bernard R. Simpson, 129 Norran Drive, 14609.
 - Q. That's Rochester? A. Yes.
- Q. Mr. Simpson, what's your trade or craft? A. Stationary engineer.

- Q. How long have you been a stationary engineer?

 A. Since 1961.
- Q. And there's testimony on the record that you were employed as a stationary engineer, as a Chief and a Supervisor at the 1400 North Goodman Street Plant. What type of license do you hold?

 A. Chief Engineer with an R2 in Refrigeration.
 - Q. Do you have knowledge of the provisions of the Safety Code of the City of Rochester as it relates to the operation of a boilerroom? A. I do, sir.

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MR. McGEE: You want to mark this 8 for identification.

(The document above-referred to was marked General Counsel's Exhibit 8 for identification.)

Q. (By Mr. McGee) Mr. Simpson, I'm handing you what' been marked as General Counsel's Exhibit 8 for identification. It's a document entitled, 'City of Rochester, New York, Chapter 103 Stationary Engineers and Refrigeration Operators Licensing Ordinance.'' I'm referring you to Section 103.3 the second and third paragraphs thereof.

If the Court please, I would have Mr. Simpson read those or read them myself.

THE WITNESS: 'No person other than a licensed stationary engineer or refrigeration operator shall operate equipment as defined therein."

MR. PAYLEY: Excuse me. On my copy, that's "herein."

THE WITNESS: "Herein. No person who's a licensed stationary engineer or refrigeration operator may have charge of a plant in

in excess of that which is authorized by the scope of his license. No person whose license has been revoked, cancelled or suspended may operate equipment as defined therein during -- "

MR. PAYLEY: Excuse me. That's "herein," on my copy.

*THE WITNESS: "Herein," I'm sorry. "During such period that the license is revoked, cancelled or suspended."

"B, no person may employ or permit any person who's not a licensed stationary engineer or a refrigeration operator to be in charge or operate equipment as defined herein. Or any person who is a licensed stationary engineer or refrigeration operator to be in charge of or operate equipment as defined herein in excess of that which is authorized by the scope of his license."

"C. If a licensed stationary engineer of the proper class has charge of the equipment as defined herein, a licensed stationary engineer of a lower classification may operate such equipment under his responsibility but this privilege does not apply to what -- to watchmen -- " The rest has reference to refrigeration which is not part --

MR. PAYLEY: As long as you're reading it, would you finish it, please.

THE WITNESS: All right. Just in the interest of time, sir.

"If a licensed refrigeration operator of the proper classification has charge of equipment as defined herein, a refrigeration operator of a lower classification may operate such equipment under the former's responsibility." That completes those sections.

Q. (By Mr. McGee) Mr. Simpson, what's the total boiler house power capacity at the 1400 North Goodman Power House?

A. Under current methods of computation which is based upon 34 1/2 pounds of steam power from a 212, the fact that the manufacturer rates these boilers a total of three of them at 30,000

pounds each per hour, this method is these boilers an aggregate of 2610 boiler horsepower without considering the factor of evaporation which would lower it somewhat. In either case, it's going to be in the neighborhood of 3,000 and more. Much in excess of the first class license.

- Q. What level of BHP is a Chief Engineer's License required?

 A. Anything in excess of 1,500 aggregate total.
 - Q. BHP's? A. Boiler Horsepower.

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- Q. Did there come a time when you learned that Bausch & Lomb might be interested in taking over the premises at North Goodman Street? A. Yes.
- Q. When did you first learn this to the best of your know-ledge?

 A. I would have to say during the month of July,

 1973.
- Q. How did you learn about this? A. What you would refer to as, "grape vine," but officially through a notice in the newspaper as previously testified to.

- Q. You know Eugene Roberts? A. I came to be acquainted with him.
- Q. And what were those circumstances? A. I was in the plant in the area of Industrial Relations one day when Mr. Roberts, Mr. Faro and Mr. Burns were making an inspection tour. I introduced -- I introduced myself to Mr. Faro, reintroduced myself to Mr. Faro having been acquainted with him during my previous stay at Bausch & Lomb.
- Q. Now, did you ever have any conversation with Mr.

 Roberts during your employment with Bausch & Lomb? A. Yes,

 I did, briefly at that time.

- Q. When was that? Was there more than one occasion?

 A. With Mr. Roberts that was the only occasion that comes to my mind.
- Q. When did you talk to Mr. Roberts about employment with Bausch & Lomb? A. When?
 - Q. When, yes, please. A. That would have to be in late July or early August when this tour had taken place.
- Q. And you say there was Mr. Arms and others present?

 A. No, at that time, no.
- Q. At that time it was just you and Roberts? A. Me, myself, Mr. Roberts, Mr. Burns and Mr. Faro.
- Q. And what was said with respect to employment with Bausch & Lomb by either you, Mr. Roberts or anyone else present?

 A. I mentioned to Mr. Roberts what my job was with General Dynamics which was Chief Engineer of the Boiler Room. I also mentioned that it was an assumption on my part that if they bought the place, they would undoubtedly want someone who knew something about the place. I don't believe I, as I stated, was trying to impress anyone with any particular knowledge of my own. The fact that I had been there did equip me with a certain amount of knowledge that possibly strangers would not have had. I was not trying to impress anyone. I did not feel I needed to do that. I did want to say a word on behalf of my three men who I was and am very high on.

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Q. Well, when you discussed this matter of employment with Mr. Roberts, what was his response, if you recall? A. His response was that we have to look after our people first before hiring any outsiders.

- Q. Now, with respect to filing the application for employment with Bausch & Lomb, there came a time when you did file such an application, is that correct? A. Correct.
- Q. What were the circumstances leading up to your filing this application? A. Well, after my contacting Mr. -- or being contacted rather, by Mr. Fruccione on one of his trips, I decided that I guess maybe I'd better get up and get something started. Mr. Arms at the time was taking the position that I'm not going after them, they got to come after me. Well, this sounds good but I couldn't afford the luxury of this because there were three men that, until I did something, they didn't know what was going to happen to them, so I decided to be the lead off man. I went up first.
- Q. To where? A. To St. Paul Street, 675, the employment office.

- Q. And with whom did you talk at -- let's call it -- the first visit? A. After getting an application at the main desk and filling it in, I was called for an interview with a Mr. Hulick of Bausch & Lomb.
 - Q. Immediately after filing? A. Yes, that day.
- Q. Okay. A. And he examined my application and he's a very pleasant gentleman. I could see that he had no real authority and I understood this. We talked. To him I mentioned the men under me that I have that you must realize at this point that these men had worked for three years with a gun poised at their head. They knew the plant was going out. All these three men were in their 50's. All these men wanted to finish out their years and draw a pension from somewhere. I mention this -- at this point in time I stressed the point of these three men.

Q. Did you point this out to Mr. Hulick? A. Yes, I did to which he said, "Well, we'll --" He gave me the applications to take back with me in answer to the question of where did I get the application. In fact, it was at that point that he opened a file for

the Goodman Plant for the people that like these gentlemen that would come in subsequently to look for work at this plant. He said, "Have these men fill these applications out, put them in the envelope," that he provided with his name on it and, "When I get them, I'll place them in this file."

- Q. Then what happened with respect to this employment question? A. Well, the usual thing that it was too early, no purchase agreement had really been reached. It was premature to talk about conditions of hire and the same thing was reiterated concerning the placement of their people which I said I understood but by this time I'm beginning to get sick of hearing this but I understand it.
- Q. Let me ask you this at this point: Did you pick up applications for anyone else besides the three stationary engineers?

 A. One additional for Mr. Arms who had no connection with this but I had no --
 - Q. And did you give it to Mr. Arms? A. Yes.
- Q. When was your next conversation with a Bausch & Lomb Representative in connection with an employment possibility?

 A. Well, during that visit, I believe I had a short talk with Mr. Faro -- and this was part of the same visit.
 - Q. Was this before you talked to Mr. Anderson? A. Correct.
- Q. All right. Tell us what happened or what was said in your conversation with Mr. Faro? A. This again was the most general of any conversations due to its point in time. Its scope was that, yes, if the company does buy the Goodman Street or not get involved in legal semantics, if they take over usuage of the plant on

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Goodman Street, yes, they'll need people. They are going to want to recruit people from this area to avoid people like driving them from way out west of the City to the east side and things of this nature. But now it's premature to go into this but their own people would be considered first. I always heard this. They never left a stone unturned in that respect.

Q. All right. Now, after talking briefly with Mr. Faro, what happened next? A. At this point with Mr. Faro, I -- after

hearing so much about their people, I made some inquiries on my own of acquaintances in the field that you could come up with when you're a Chief Engineer and know some people. My information told me that they had no qualified people, qualified the way I would want to have under me in that plant. So I told him at that point --

- Q. Him, being whom? A. Mr. Faro. It comes to my knowledge that you have no qualified people. We didn't belabor the point. It was thrown out in the manner that I heard about their own people for four different occasions and it was my understanding they had no people.
- Q. Let's go onto the next conversation with any Bausch & Lomb Representative either Mr. Sam Fruscione, Anderson or whoever it was. A. This would have been in early or mid-September at which time I was called over to the main plant having been in the boiler house at General Dynamics. I was told that Sam Fruscione wanted me to show him through Area 67.
- Q. Did you have a squawk box system? A. No. There was an inter-plant telephone.
- Q. I see. You got this call on the phone? A. I was told to go over to the plant from the boiler room. Mr. Fruscione wanted to see me.

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- Q. Okay. You went over to Area -- what was it? A. I met Mr. Fruscione at the front desk. He immediately gave me the motion that I should follow him rather than to say anything. So I followed him and we went up the stairs and around to what was then known as Area 67 and which I believe later became used for engineering but that's immaterial.
- Q. What was it used for at that time? A. It was a blank area but it was -- later used for engineering purposes.
- Q. I'm interested in the point in time you were talking with Mr. Fruscione in Area 67. A. It was at that time empty but being prepared for the use of the engineering people, for drafting boards and things.
- Q. I see. Now, was anyone else present? A. No. Unless a guard had been in the hall or something. I had no knowledge of anyone else being present.
- Q. Now, to the best of your recollection, what was the conversation? What happened during your talk with Mr. Fruscione and yourself? A. The conversation came right straight to the point as usual in the case with Mr. Fruscione. We got over by the window and there was me and Fruscione occupying a spot about this big. Mr. A. Fruscione pointed into my face with his index finger and said, "Bernie, make no mistakes about it, this plant will run with or without you or with or without me. You've got to talk for Bernie Simpson and not for anyone else." He said, "You cannot tell a company like this one what to do." I presumed he meant in regard --
 - Q. I don't care about your presumptions. A. Okay.
 - Q. Just the conversation? A. I said, "I'm not trying to tell anyone what to do. I'm only saying what I planned to do and that's not to become nursemaid or something to this effect to a crew of green men. That's what I plan to do. I'm not telling you what to do."

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- Q. On this particular context, did Fruscione say about the potential -- did he say anything about the potential of this plant? A. He said, "This plant is going places. You had better believe that -- "or something --" This plant is coming up, going places and it would be good for you to become -- to get on the team but you must talk for yourself. Bernie, I'm telling you this as a friend, not as an official company representative because, as you know, this is not my bailiwick," which is his term because it's one I never used.
- Q. And you had mentioned about an -- A. I had mentioned to him but knowing it wasn't his job, I didn't belabor it with him but I had with Mr. Faro and previously in the meeting with Mr. Faro, Anderson -- Ron Anderson, mentioned this. So this is what they're referring to I was led to believe, the placement of the three men in the facility.
- Q. You're talking about applications? A. He said, "These men have filed their applications." I said, "They've sent them in; why don't anyone talk to them."
- Q. What happened then? A. That's when he took a note-book similar to this one that I had and he wrote down the name of

Frank Anderson. He said, "Go see him." I said, "Can I get time for them to see him, too?" He said, "Take that up with Mr. Anderson." He never became involved with anything of this nature.

- Q. And that was about the substance of that conversation?

 A. That was pretty much it at that time and it might have been ten min 'es total. Because he was a very busy man at that time.
- Q. As a result of this talk with Mr. Fruscione, you did visit Mr. Anderson? A. Yes, I called Mr. Anderson's office -- may I back track, Mr. McGee?

Q. Not necessarily because I don't think it's relevant to the issues about the case and the license at that time or your discussion with Faro. You may continue with your contact with Mr. Raymond Anderson, if you please. A. I took it up -- I took it upon myself to arrange for a time that Bausch & Lomb would interview our three people at once. The reason I did this was it was the last week before the men would go on what is called winter operation. It was the last opportunity -- now, it had been the company practice, they knew the time was short. If a man had a job to interview, we let him do it. That's the least they could do, the men are being put on the street. A man comes up to me, supervisor, and says --

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- Q. (By Mr. McGee) You really don't have to explain why or what the summer heating season had to do with it. It's just the fact you did subsequently contact Mr. Anderson and after talking to Fruscione and let's get into the arrangement of the meeting, if any, with Mr. Anderson. A. I placed a call to Mr. Anderson's secretary. The number given me by Mr. Fruscione. Yes, I was given a time when he could indeed see the three gentlemen.
- Q. How about yourself? A. I did not set up a time then for myself.
- Q. Were you interviewed by Mr. Anderson before your three men were or afterwards? A. Afterwards.
- Q. Now, let's get to the first interview that you had with the -- with Mr. Anderson, Faro or whoever it was with respect to their offer, if any, of employment. Do you recall when that was?

 A. It would have been October 4th, Thursday.

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Q. And with whom did you have this interview? A. Mr. Anderson.

- Q. In his office? A. In his office.
- Q. Just the two of you? A. Just the two or us.
- Q. Now --

MR. PAYLEY: Excuse me a second. What was that date? THE WITNESS: October 4th.

- Q. (By Mr. McGee) Thursday? A. Yes.
- Q. How would you pinpoint this date? A. I pinpointed the date because I did not appear before the Examining Board for my Chief Engineer's position until October 1st and was the first day of the heating season. That's why it sticks in my mind.
- Q. Okay, go ahead with your October 4th, conversation with Mr. Anderson. A. This conversation -- the application I had previously submitted and after some general amenities, we got down to what I would -- the conditions I would have to have to work, you

know, in a normal -- a normal employment interview. It was at this time he made me the official offer.

- Q. And what was the offer? A. \$192 a week as a leader, lead engineer, or whatever you would call it. The title doesn't come back. It was not the status of chief that was offered first.
- Q. Would this put you in a time and a half position for overtime? A. Right. But I had no desire for that --
- Q. What did you say to Mr. Anderson with respect to that offer? A. -- as I can have virtually any job in the City in the neighborhood of \$6 an hour. I have no intention of accepting \$4.80 for anyone. And happen to be top man to do it.
- Q. All right. What happened after your October 4th conversation with Mr. Anderson? A. Well, after the official offer, Mr. Anderson as was testified to, left the office, came back and the offer was amended to a total of \$200 a week with the title of chief engineer. But still under the wage hour provision.

- Q. What did you do with respect to that offer? A. Mr. Anderson asked me to think it over and get back to him. I didn't turn it down flat. He said, 'Get back to me.' And I said something non-committal which I can't remember. Because at the time I was totally disgusted with that offer --
- Q. All right, all right. You were non-committal with respect to the offer? A. I certainly didn't accept it but I don't believe I rejected it flatly.
- Q. What happened after that interview with Mr. Anderson then? This is all in connection or context with seeking or obtaining employment with Bausch & Lomb. A. All right. I did absolutely nothing in that regard. My mind was made up.
- Q. What contact, if any, was made for any discussions with the representative of Bausch & Lomb and yourself? A. Well, time was marching on at the latter part of October, I got another call.
 - Q. From whom? A. Mr. Fruscione.
- Q. And what did he say and what did you say on the phone?

 A. "Bernie, have you gotten back in contact with Mr. Anderson on the offer?" I said, "No, I haven't. I have no interest in that offer. It does not appeal to me." So he said, "Will you call El Faro?"
- Q. That's Ellis Faro? A. Right. "And talk to him." So, "Sam," I said, "I'll talk to anybody, talk's cheap." So that was my response to that. I said, "Yes, I'll call him."
 - Q. All right. Did you phone Mr. Faro? A. Yes, I did.
- Q. When did you phone him, right after this conversation?

 A. That day he was, I believe, out. I believe the next day I got a hold of him.
- Q. The gist of that conversation on the phone -- A. Mr. Faro said, "Bernie, why don't you come up here and let's sit down over a cup of coffee and get this thing straightened out."

Q. Did he mention anything about thought the matter
might be A. He said, "I believe we've met your objections."
Q. What happened? Did you tell him you would meet
him? A. Yes. I said in fact, I believe the next day, now it
may have been two days, but it was momentarily at that time -
Q. About what time of the year was this? A. Must have
been the latter part of October, possibly the first of November, but
at least the last week in October. Because three weeks had passed
and I hadn't responded to the offers extended by Mr. Anderson.
Q. All right. There came a time when you had a meeting
with Mr. Faro, is that correct? A. Right.
Q. And he was in his office? A. Right.
Q. The two of you were alone? A. Right. The door was
closed
Q. What about the coffee? A. He had one of the office
secretaries bring in coffee. He asked me how I wanted it. I told
him. The girl brought the coffee in and left closing the door behind
her.
Q. And you and Mr. Faro engaged in a conversation?
A Yes.
Q. To the best of your recollection, tell us about that
conversation?
* * *
. All wight Mr. Faro said that he had been in contact with
. All wight Mr Faro said that he had been in contact with

A. All right. Mr. Faro said that he had been in contact with Mr. Ashcroft, one of the Vice-Presidents.

Q. Yes, we know. A. And Mr. Ashcroft had said, look, let's get this thing wrapped up. Offer Simpson Level 3 privileges, \$240 a week and let's get him on the -- let's get this one on the road, or this is hearsay, what was told me.

- Q. By whom, Faro? A. Faro.
- Q. Did Faro indicate some sort of a title? A. Manager of the Boiler House.
- Q. All right. What happened after that? A. The salary was \$7 a week more than I was making.
- Q. What did you say to Mr. Faro? You said something about the money to Mr. Faro? A. I said, "The money is very satisfactory but there's one more thing and I think you know what it is," because by this time it had gotten pretty repetitious.
- Q. Yes, but what did you say? A. I said, "What about my three men?"
- Q. What did he say? A. "Bernie, will you please back off this. We can't touch any of those men." He said, "If we touch anyone of those men, we have to take the union contract and you know that this company has never dealt with the union and never intends to deal with the union. This may change some day. I'm not at liberty to say." He says, "I'm not even prepared to say whether the company is right in this position. Now, Bernie, if you have any regard for me personally, you'll not let this out because if you do, I'll be forced to deny it. It's because of my personal regard that I have to say this but it's the truth."
- Q. Now, what did you say in connection with your men after Mr. Faro made this statement? A. It was after making this statement that he said, "Would these men consider other jobs, for example, plumbing and steam fitting?"
- Q. Before we get into that, did you make any comment about these men, your three stationary engineers, about their ages and their desire to continue as stationary engineers and so forth?

 A. Yes. I said, "These men -- we're talking about men in their 50's. We're talking about men that are in the twilight of their

working years and I just can't see them dumped onto the street at this stage. They've stuck by me and made my job a pleasant one."

- Q. Then after that what was his comment with respect to your plea for the men? A. It was then that he asked, "Would these men consider other jobs? What would they have to have in the line of a wage to work in --"
- Q. When you say, "other jobs," would you elaborate on that? A. In the scope of our conversation, this was made to include basically like the plumbing shop which is close to the engineering field, the maintenance and that.
- Q. Did it exclude the boiler room? A. It excluded the boiler room. Anything but the boiler room.
- Q. And you said -- continue. You made some inquiries as to what they might expect. A. And I said, well, since I know what their wages are, they would have to have at least what they're getting now. We're in the neighborhood of \$5 an hour. Without even talking to anyone, they would have to have that.
- Q. What did Faro say? A. He said, "Go back and sound out these gentlemen --"
- Q. Before going to that -- A. Well, he said, "This way, if they were to take jobs in the Bausch & Lomb employ and at a later date it should be proved that they are needed in the boilerroom because these ne 'qualified' people," that they were going to get didn't work out, "did not work out, that they -- I could possibly get these men back on a transfer circumventing the need to deal with the union."
- Q. Now, upon this proposition, what happened? A. Well, to me, the time was getting short. I liked their offer to me personally. And I said, "I'll sound out the men on the terms we've discussed. I'll accept the offer."

- Q. And did you make any provision with the possibility that these men might be available to you later? A. Well, this was in the scope of if they offered these men the jobs and if I needed them later, I could get them. This was the only way I would take this job.
- Q. That was a condition of which you accepted? A. It was the condition I understood that I was accepting it under. It was my understanding.
- Q. Did Faro give you his word with respect to these three men? A. He gave me his word that he would check with his people on this. He would get back to me and he would -- they would call these people into discuss this with them. It was not up to them to call Bausch & Lomb.
- Q. Now, when if any date was set for them calling in Herman, Griffin and Williams? A. This was later the same week, Thursday, I believe.
- Q. And what date was that, November -- A. That would have been the 1st of November or the last of October, but I think the 1st of November.
- Q. This is the conversation we're talking about -- A. Yes, the conversation.
- Q. And when were the men to be interviewed? A. At that time, Mr. Faro, he said, "Bernie, don't think that we've forgotten about your men. We'll talk to them at about the middle of November concerning these openings." To that, I agreed, fine.
- Q. Did you take the job? A. I sounded them out, if they were interested.
- Q. All right. You mentioned the date of November 15th. You were in contact with the three stationary engineers and you had related to them your conversation with Mr. Faro? A. Right, as asked to by him.

- Q. Is that saying the 15th of November, then -- instead of saying the 15th of November, I'll say mid-November. A. That's more like it.
- Q. Now, what happened in November, if anything? A. Well, that's just it, "if anything." Nothing happened with regard to Bausch & Lomb contacting me or any of my people because I contacted these men every morning. Every day I had constant liaison with them. Every day I had constant liaison with them. The result was that no one had been contacted.

MR. McGEE: All right. The point is made that Bausch & Lomb did not take these men and I'll ask Mr. Simpson to briefly describe the events of December 17th as it relates to him. Because it's been called a charade.

THE WITNESS: On December 17th, Mr. Bess came over to the boiler house at around 10:00 in the morning. The men, Mr. Williams had finished up his tour of duty the previous day. He was done. The ones present were Mr. Griffin, Mr. Herman and myself.

- Q. (By Mr. McGee) At that time you were on duty at the boiler house at General Dynamics? A. 1400 North Goodman Street.
 - Q. In the morning? A. Right.
- Q. Go ahead. A. So Mr. Bess was there because the place was to be turned over and it's the practice to see that it's turned over operating, the boiler's full of water, not ready to blow up or something. Due to the trend of events we didn't know what was going to happen. So he was there, I was there. Two of my men were there. At noon we got a call from Mr. Draper over in

the main plant, our boss from San Diego. He said, "Well, Bernie, the plant is now theirs and they're on their way over. " I said, "All right." So we're at the front door. They come over. They come inside, that is, Mr. Fruscione, Mr. Vink and one of the engineers that I was to be given. Mr. Draper introduced -- either he introduced Bess to Mr. Fruscione or Mr. Bess introduced himself as previously testified. I don't know which.

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All right, go ahead. Q. "Bernie, your problems are now our problems." At this point Mr. Bess said, "Bernie, is it my understanding that you intend to operate this plant with a crew of green men?" I said, it appears that's the way it is. He said, "Well, Bernie, you don't have to take this job if you don't want to. You can if you want but if you don't want to, there's a job open I believe you can fill." I said, "What about the operation I had back last March?" He said, "There's no problem. And there will be better wages and union pension," which is very important to me, and on the spot, I said, "I do accept that job right now." Mr. Fruscione said, "When did you make that decision?" I said, "I made that decision as soon as I found out I had a job to go to. " So that ended my conversation. The rest was picked up as previously testified by Mr. Bess because he was the one that then talked with the Bausch & Lomb people.

A. But Mr. Fruscione said,

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(By Mr. Payley) Did you take Mr. Fruscione on a tour of the premises? A. At various times, yes.

- Q. And during these tours, the ones you were engaged in, did you ever ask anyone from Bausch & Lomb about employment opportunities in the boiler house for yourself? A. Yes.
- Q. Did you ask Mr. Fruscione about a possible job for yourself, say, in July? A. I can't say that early but possibly in July. I did but I can't pin the date down.
- Q. Possibly in July but you can't pin the date. So you did inquire from Mr. Fruscione about the possibility of employment in the boiler house if and when Bausch & Lomb took over the premises?

 A. Yes.
- Q. What did you say to him in July? What did Mr. Fruscione say to you about who you should centact and what you should do in obtaining employment with Bausch & Lomb? A. Go to Employment and fill out an application.
- Q. Did you indicate to Mr. Fruscione, this is the July conversation, that you had certain qualifications to run the boiler house? A. Didn't even get irto that at that time because it was such a brief meeting --
 - Q. Well, what did you say to him? A. That I'm the Chief Engineer.
 - Q. You introduced yourself as the Chief Engineer?

 A. Correct.
 - Q. And then just asked him about if and when Bausch & Lomb took over at the Goodman Street premises you might be interested in a job in the boiler house? A. Yes, correct.

- Q. And that was the extent of the conversation? A. That was it. I felt that -- the fact that I was Chief Engineer precluded the fact that I had some knowledge of it.
 - Q. Did you say anything else to Mr. Fruscione at that time?
 - A. Not that I can swear to.

- Q. Did you mention your three men at that time? A. I do believe I did, even if it was a brief conversation.
 - Q. So you did say something else? A. Yes.
- Q. What did you say? A. That I have three men over here, we'd all like to stay and that was about the end of the conversation.

 I dropped it right there.
- Q. All right. So on August 21st, you go to Bausch & Lomb and make application for employment and I show you Respondent's Exhibit 1, and who did you talk to at that time? A. First, after filling out the application, it was examined by a Mr. Hulick in the Employment Office as I previously testified on direct. He was the one who gave me the applications for the additional people.
 - Q. Let's just talk about your application, first. You gave him your application? A. He had it.
 - Q. You filled it our right on the premises? A. Yes.
 - Q. And then what did you and Mr. Hulick talk about?

 A. Just the fact that they would take their own people first but if the people I talked about wished to apply, that he would give me applications to take back to them for them to fill out and send them to his attention and he'd place them in a file.
 - Q. Now, he specifically said to you that, 'We'll be hiring our own people first?" A. Yes.

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- Q. Did you at that time express a concern about the qualifications of the Bausch & Lomb people? A. Yes.
 - Q. What was that about? A. What did you say, sir?
- Q. I'm sorry. Did you raise the question with Mr. Faro at this time about the qualifications of the Bausch & Lomb people?

 A. Yes.

MR. McGEE: I'm sorry. I don't understand the question.

MR. PAYLEY: The qualifications of the Bausch & Lomb people who operate the boilers.

MR. McGEE: I'm sorry.

THE WITNESS: Yes. We did bring that up at that time and was concerned at that time. If these men were going to be my responsibility, if I was to have the job as Chief. There were many "ifs" here.

- Q. (By Mr. Payley) Precisely what did you say to Mr. Faro about the qualifications of Bausch & Lomb people? A. The words I can't remember, but the substance was that it was my belief that Bausch & Lomb have no qualified people as I saw it. I'm not saying qualified in anyone else's -- in my mind, they had no people.
- Q. Well, how did you know that? A. Because any boiler room you work in, you've got to be shown things. Now, this was true if I was to go over anywhere else -- I have a Chief Engineer's License. That doesn't mean I can go into someone else's boiler room and know everything --
- Q. You use the word, "Qualified." What you're now talking about is really not qualification, you're talking about familiarity?

A. Which is, in my mind, part of the term 'qualified,' speaking from my knowledge of this plant and being the Chief Engineer.

Q. So you had -- A. They work together.

MR. PAYLEY: I'll withdraw this.

- Q. (By Mr. Payley) Now, in early September -- you then met again with Mr. Fruscione. Now, when was this? A. This was approximately two weeks after filling out and filing an application which would place it early in September, thereabouts. Sometime prior to the middle of September.
- Q. And you met with Mr. Fruscione? A. That would be correct.

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- Q. And where did this meeting take place? A. Initially at the front desk of the Goodman Street Plant, later in Area 67.
- Q. What did you talk about? A. That was this -- when Mr. Fruscione pointed his finger in my face and said, "Bernie, make no mistakes about it, this company will run with or without you or me." That's that conversation.
- Q. Was there anything else besides what we discussed about a job with Bausch & Lomb? A. Well, I don't believe I can add anything to my direct on that and I don't want to be repetitious.
- Q. Well -- A. Because this was covered as to what he said.
- Q. This is a little bit different. I'm approaching it from a different point of view. You did talk with Mr. Fruscione?

 A. Yes.
- Q. And you talked about employment with Bausch & Lomb?

 A. We did, yes.

- Q. Were you alone? A. With him, yes.
- Q. Just the two of you? A. Right.
- Q. All right. To the best of your recollection, what did Mr. Fruscione say to you at that point? A. He said, "Bernie,"

he says, "You've got to talk for Bernie Simpson, not for anyone else." That's what he said --

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- Q. All right. When did you make the statement that, "I do not want to play nursemaid to a green crew"? A. Either at this time or slightly prior to that or slightly after, between that time period.
- Q. You heard Mr. Griffin testify to the fact that he overheard you say that? A. I did say it exactly when, I cannot tell you.

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- Q. (By Mr. Payley) Continue with the conversation.

 A. The conversation as is I'm not telling any company what to do. I'm only saying what I claim to do and that's not to run that plant with a green crew. That is when I'm sure the thing came up about being a nurse maid and that was the way it came up.
- Q. This is the second time it came up? A. Yes. The first being with Mr. Faro.
- Q. You testified to another conversation with Mr. Fruscione?

 A. Which I cannot place whether it was before or after this one. It could have been the first it could have been the second. But I don't know it did come up here under the circumstances because he told me I was telling them what to do. I maintained that I was not telling them what to do but rather saying what I planned to do.

- Q. Did you talk about your crew? A. Come again, sir?
- Q. Did you talk about your crew? A. At that point, yes, when I believed I had the meaning of his accusations.
 - Q. So now you do understand -- A. I felt I did.

- Q. And what did you say to him about the crew? A. He says, "You'll have to talk for yourself. They have to talk for themselves."
- Q. Did you say anything to him about their applications for employment? A. I said, "I understand they've sent in their applications."
 - Q. And is this all -- A. As they were instructed to do.
- Q. Is that all you said? A. Says, "Why anyone talk to them"? I did say that to him.
- Q. But of your knowledge, you're not sure whether the conversation -- the company had received all those applications?

 A. I don't know. If they're placed in the mail, I have no way of knowing that they got there.
- Q. All right. Now, did he tell you to see someone?

 A. Yes.

- Q. Who was that? A. Mr. Anderson. He wrote his name down.
- Q. (By Mr. Payley) Okay, Mr. Simpson, when did you next have a conversation with Bausch & Lomb people concerning employment in the boiler house? A. Was this after the interview with Mr. Anderson?
 - Q. Yes, it was. A. All right. The next conversation would have been the phone call made to me by Mr. Fruscione which would have happened a few weeks later than that.
- Q. Excuse me. Between that time and your conversation with Mr. Fruscione, you had no contact with people from Bausch & Lomb? A. I'd have to say no. I can't recall any.

- Q. Okay. A. Mr. Fruscione called me and said, "Have you contacted Ray Anderson?" I said, "No, I have not." He said, "Well, will you come up and see how Faro -- see El Faro. Will you come up and talk to El Faro again?" I said, "I'll talk to anybody."
- Q. Now, December 17th you were present at the time that Bausch & Lomb took possession of the premises? A. Correct.
 - Q. And you also testified that on December 17th that Mr. Bess was present? A. Correct.
 - Q. And that Mr. Bess had about 12:00 o'clock engaged you in conversation? A. Right.
 - Q. And this conversation concerned employment elsewhere? A. Yes.
 - Q. Now, had you talked to Mr. Bess previously about this?

 A. Yes.
 - Q. Can you tell me when that was? A. About three days before then.
 - Q. Three days before the 17th? A. Right.

- Q. And can you tell me what those conversations dealt with? A. They dealt with whether there was any possibility of any other jobs at that point in time.
 - Q. Did you seek out Mr. Bess? A. Seek him out?
- Q. Did you call Mr. Bess three days before the 17th and ask him whether there were any jobs elsewhere? A. Didn't call him particularly. I was talking with him on another matter.
- Q. Did you raise with Mr. Bess in that conversation that you wanted another job? A. The way things were going, I asked him if there would be one available.

- Q. Is that what you said, "The way things were going?"
 A. Yes.
- Q. (By Mr. Payley) But you talked to Mr. Bess about a job? A. Correct.
 - Q. And what did Mr. Bess tell you? A. He told me of one that might be opened.
 - Q. Did he specify what that job might be? A. Yes, he did.
 - Q. And what was that job? A. It was Mid-town Holdings.
 - Q. And what position would you be given? A. Operating Engineer. Nothing higher.
 - Q. Not a Chief? A. No.
 - Q. Just an ordinary Engineer? A. Correct.
 - Q. And did you indicate to Mr. Bess at that time that you would accept employment? A. I told him I would place under consideration the offer which was all I could say at that time.
 - Q. Well, this was three days before the 17th. You people hadn't heard from the company and you, evidently, had made up your mind that you weren't roing to call them, so you must have

had a sneaking suspicion when the 17th came around that Mr. Williams, Mr. Griffin and Mr. Herman would not be on the company payroll.

MR. McGEE: I object to any suspicions.

JUDGE DIXON: Putting it in the form of a summary question, overruled.

THE WITNESS: Oh, yes, I had my suspicions.

Q. (By Mr. Payley) Isn't this why you talked to Mr. Bess? A. Certainly.

- Q. And what did Mr. Bess' offer of employment include?
 A. Well, for one thing, it wasn't an offer at that time.
- Q. *Or his indication to you of potential employment.

 A. What did it include?
- Q. Yes, what was the money, benefits? A. Equal money, union pension which is quite important.
- Q. And what was the rate that he gave you? A. In checking with the contract, the rate turned out to be \$5.60 an hour.
 - Q. Is that what you're earning now? A. Right.
- Q. And did you say to Mr. Bess that under the circumstances you would consider that position? A. Would consider but there was -- at that time I had made no decision.
- Q. You made no definite response? A. Because I didn't know what was going to happen.
- Q. You didn't know what was going to happen. A. On Monday.
- Q. Did you say that you were interested in it? A. At that point, yes, the way things were going I might be interested.
 - Q. Okay. And this is about three days before the 17th?

 A. Yes.
 - Q. So this would be what, Thursday or Friday? A. One of the two days.
 - Q. Okay. Did you see or talk to Mr. Bess subsequent to that? A. I do not believe so. I do not believe so.

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ELLIS FARO

was called as a witness by and on behalf of the Respondent and, having been previously duly sworn, was examined and testified as follows:

JUDGE DIXON: You realize, Mr. Faro, you're still under oath?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

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- Q. (By Mr. Payley) Did there come a time when the company made a subsequent offer of employment to Mr. Simpson? A. Yes.
- Q. Tell me when that was? A. Approximately a month later, early October to mid-October. I believe it was still around October 10th rather than 20th as has been brought out.
- Q. And did you personally talk to Mr. Simpson at that time?

 A. Yes, I did.
- Q. And what were the terms of that offer? A. The offer was extended at \$240 per week as Manager of the boiler house, what we call Level 3 privileges which is exempt status which has different privileges associated with it and not the provision of overtime unless scheduled overtime.

- Q. And did Mr. Simpson accept that offer? A. My impression certainly was that he immediately accepted the offer.
- Q. Now, you were present during the time Mr. Simpson testified, were you not? A. Yes, I was.
- Q. And did you hear his testimony concerning this meeting?
 A. Yes, I did.
 - Q. You disagree with him on the dates? A. Yes, I do.
- Q. Okay. Now, he said that he accepted this offer on condition. And that condition was a promise from you that you would place those people, Mr. Williams, Mr. Herman and Mr. Griffin

with jobs at Bausch & Lomb. Is that the way you remember it?

A. That's not my understanding, no, sir.

- Q. He also testified that you told him, supposedly in strict confidence, that the company could not touch one of those people because to do so would require them to accept the union contract?

 A. Absolutely not.
 - Q. You did not say that? A. No, I did not.
 - Q. Mr. Faro, how long have you been in the Industrial Relations business? A. About 32 years.
 - Q. 32 years? A. Yes, sir.

CROSS EXAMINATION

- Q. (By Mr. McGee) Were you engaged in a pre-screening type interview? A. On August 21st.
- Q. Is that part of your job or Mr. Anderson's or Mr. -A. It's part of all our jobs which the circumstances dictate.
- Q. On the first occasion, did you give any indication to Mr. Simpson as to what offer you might make him or whether he would be employed? A. No, I did not, sir.
- Q. What did you say to him? A. I told him this was preliminary, that we still had no idea of when or if we would even get the premises on Goodman Street.
- Q. Now, here again, on the September 10th interview, according to your statement, Simpson alluding again to the complexity of the boiler house, stated that one of the considerations he felt important in the offer was that he have an experienced crew. He spoke on behalf of the men who are presently working under him. Do you recall that? A. Yes, I do.

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Q. And in response to Mr. Simpson's position in that regard, what did you say to him?

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A. Yes, he did, sir.

- Q. Now, let's take it this way. You told him that any or all three of the men could be considered for other positions in the company. Now, taking that as a lead, in what context did you make that statement? A. I had reviewed their applications. Mr. Anderson had interviewed them. I gave them a high recommendation as Bernie Simpson. I felt confident, with the operation we had in the company, I don't think this is understood, when they were available, that I was confident that we probably could place them within a maintenance position within the company.
 - Q. For what purpose? A. What purpose, I don't under-stand --
 - Q. Wasn't the understanding that Mr. Simpson, being concerned about operating that complex system, did not want to have men who were not experienced although you might have even men with Chief's License, they did not know that particular operation

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and wasn't it his concern that he had to have men to rely upon and that you assured him that they could be placed in plumber's pipefitter's or related occupations and if he felt that he was having trouble with the men that were assigned by Bausch & Lomb to him, that within short notice he would have members of his present crew available to come and help him out? Wasn't that the understanding? A. No, sir. I believe that's the interpretation he put on it but that's not what I had in mind.

Q. What did you have in mind? A. I had in mind that these were men nearing 50 years of age that were looking for jobs

to carry them forward, that we have been very busy doing a lot of hiring. We were looking for plumbers almost anytime. They were men who could fit into plumbing jobs. I personally felt confident we could place them in a variety of jobs elsewhere in our company as they became available.

- Q. And you say you were hiring plumbers? A. Correct.
- Q. Off the street? A. Yes.

Q. But you never hired any of these three fellows who qualified as plumbers and let's consider for the moment, although I won't concede it, that they were so-called off-the-street. Now, wasn't there some either direct or indirect promise by you that these men would be called in for an interview?

A. May I explain that?

Q. Can you answer my question without an explanation?

A. Yes.

Q. Well, please answer.

MR. PAYLEY: Excuse me. I think the witness is entitled to explain.

JUDGE DIXON: We'll let him explain.

THE WITNESS: I was confident that we could place these men, as I said before, when they were available. They were vital, as I understood it, to running that boiler house at Goodman Street before we assumed occupancy.

Q. (By Mr. McGee) After December 17th, at that time, on that particular date, did you know what the transfer date was?

A. I didn't know the closing date. When I talked to Mr. Simpson, we had talked first about November 1st. Then it was substituted December 1st. Then it was talked about the 1st of the year and when

I talked to Mr. Simpson, I talked to him a couple week later,
I said that the time to talk to your men will be a couple of weeks
before we take over. Then it will make sense. I never had knowledge
of when that closing was until the 14th of December.

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- Q. (By Mr. McGee) The fact remains though that, regardless of when the date of transfer of occupation, that there could have been interviews, there were not interviews and you had no further contact with either Mr. Simpson or Williams, Herman or Griffin, is that correct? A. Correct.
 - Q. And you did hire off the street? A. Correct.

CROSS EXAMINATION

Q. (By Mr. Cohen) I beg your pardon. Mr. Faro, you, in fact, indicated to Mr. Simpson that there would be jobs available for these men, is that correct, in the boiler room, and that is, other jobs for these men that were in the boiler room? A. I was confident that they would be able to place these men, yes.

- Q. And did it occur to you at the time of the transfer on December 14th -- 17th, that these men might be without a job?

 A. I knew in two cases that they had already committed themselves to other jobs.
- Q. But as far as the other is, you didn't know that?

 A. I did not.
- Q. And that information was only what you had heard, is that correct? A. What information, sir.
- Q. The information that the other two men had another job. A. Not that I had heard. I was called by an official of General Dynamics, the Employment Manager of Stromberg Carlson who told me Mr. Williams had accepted a transfer within the organization.

- Q. And when was that? A. I would say that was right after Thanksgiving, right around the first part of December.
- Q. Now, you heard the testimony of Mr. Fruscione and I think you also testified whereby you admitted that the boiler room was a complicated operation for your organization, is that correct?

 A. I think my exact words were that I wasn't qualified to judge the complexity of that boiler room.
- Q. But you did come to that conclusion, management of Bausch & Lomb came to that conclusion? A. I didn't come to that conclusion. I was informed of that conclusion.

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- Q. All right. So you're admitting that management did come to that conclusion? A. Correct.
- Q. As a matter of fact they hired on a per diem basis some consultants, isn't that so? A. I'm aware of that now, yes.
- Q. Now, the thing that bothers me and I'd like you to answer this, is it, if you have that kind of a problem, admittedly so, and if also you -- you intended to give these men jobs in other areas, why did you not continue them in the job that they knew so that you would not have a problem? A. I can't answer that.

RAYMOND ANDERSON

was called as a witness by and on behalf of the Respondent and, having been previously duly sworn, was examined and testified as follows:

JUDGE DIXON: You realize you're still under oath?

THE WITNESS: Yes, I do, sir.

DIRECT EXAMINATION

- (By Mr. Payley) Mr. Anderson, I'd like to refer you Q. to September 10th, 1973. On that date, did you interview Mr. Simpson for a job as Chief Engineer at the North Goodman Street A. I interviewed him for a job as the Engineer of the Goodman Street Plant, yes.
- On that date, did you extend him an offer of employ-A. Yes, I did. ment?
- Would you tell us what those terms were? A. Yes. Q. I originally offered him a job as what we term a Group Leader to be a Lead Engineer for the boiler house at North Goodman at a starting salary of \$192 a week.
- Was that offer later increased by you? A. Yes, it Q. was.
 - A. To \$200 a week. To what figure? Q.
- Did Mr. Simpson accept that offer? A. No, he took it Q. under advisement and said he would let me know later on.
 - And this took place on September 10th, 1973? Q.
- (Whereupon, at 4:00 o'clock, P. M., the hearing in the 468 above entitled matter was concluded.)

4.0

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATI	ONS BOARD,)
	Petitioner,)
v.		No. 75-4037
BAUSCH & LOMB, INC.,		
	Respondent.)
)
)
)

CERTIFICATE OF SERVICE

I hereby certify that I have served by APPENDIX	hand (by mail) two copies of the in the above-entitled case, on	
the following counsel of record, this 22	day of April 197_5	
Messrs. Nixon, Hargrave, Devans & Doyle Att: Gerlad L. Paley, Jr., & Michael J. Doyle, Esqs. Lincoln First Towe Rechester, New York 14603	Elliott Moore, Esq., Deputy Associate General Counsel National Labor Relations Board Washington, D.C. 20570	

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